

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

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IN THE MATTER OF: :  
Phase II Distribution :Docket No.  
of the 2004-2009 :2012-6  
Cable Royalty Funds :  
:CRB CD  
:2004-09  
:(Phase II)

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IN THE MATTER OF: :  
Phase II Distribution :Docket No.  
of the 1999-2009 :2012-7  
Satellite Royalty Funds :  
:CRB SD  
:1999-2009  
:(Phase II)

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Volume 4

Thursday,  
December 11, 2014

Room LM-403  
Madison Building  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT  
THE HONORABLE JESSE FEDER  
THE HONORABLE DAVID R. STRICKLER  
Copyright Royalty Judges

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(9:17 a.m.)

JUDGE BARRETT: Good morning. Please be seated. We were going to take Ms. Saunders first thing this morning. Is that correct, counsel?

MS. PLOVNICK: Yes, Your Honor.

MR. BOYDSTON: Your Honor, if I may very quickly, a housekeeping issue. Do you recall, not yesterday but the day before, we had sort of introduced Exhibit 122 but we had to make the copies of it. We did, but again I handed those around at the beginning of yesterday. I forgot to move that they be admitted into evidence.

Again, they were documents that were produced in discovery and parties had them in discovery beforehand, but we hadn't moved them into evidence.

JUDGE BARRETT: I was intending that counsel have overnight to look at them, but any objections?

1 MS. PLOVNICK: We don't have an  
2 objection.

3 MR. MACLEAN: No objection, Your  
4 Honor.

5 JUDGE BARRETT: Okay. IPG Exhibit 122  
6 is admitted.

7 (Whereupon, the above-referred to  
8 document was received into evidence as  
9 IPG Exhibit No. 122.)

10 MR. BOYDSTON: Thank you, Your Honor.

11 MS. PLOVNICK: MPAA calls Jane  
12 Saunders to the stand.

13 JUDGE BARRETT: Ms. Saunders, you  
14 remain under oath.

15 MS. PLOVNICK: Good morning, Ms.  
16 Saunders. For the record, I'm Lucy Plovnick,  
17 counsel for MPAA.

18 Ms. Saunders, this is the second time  
19 you've been called to the stand, or I guess the  
20 third time you've been called to the stand in  
21 this proceeding. What's the purpose of your  
22 testimony this time?

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1 THE WITNESS: This time the purpose of  
2 my testimony is to address some of the issues  
3 raised in IPG's rebuttal as well as various of  
4 the parts of Mr. Galaz's testimony that have been  
5 given so far in this proceeding.

6 DIRECT EXAMINATION

7 BY MS. PLOVNICK:

8 Q Now Ms. Saunders, yesterday you  
9 testified about MPAA Exhibit 341 which was  
10 admitted, and that contains copies of some MPAA's  
11 certifications for Fintage.

12 You also identified MPAA Exhibits 337  
13 and 339 through 340, and 342 through 345 as MPAA  
14 certifications for some of its claimants.

15 A That's correct.

16 Q Can you take a look at those  
17 documents? They've been premarked.

18 A Yes, I'm sorry. You say 341?

19 Q 341, which is already admitted.

20 A Right.

21 Q And then MPAA Exhibits 337, 339  
22 through 340.

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1           A     Hang on. Hang on. Sorry. 339 and  
2     340, yes.

3           Q     And 342 through 345.

4           A     Yes. Got it. Yes.

5           Q     I believe you testified yesterday that  
6     these are MPAA certifications?

7           A     Yes, they are.

8           Q     Are these all copies of MPAA's  
9     business records?

10          A     They are.

11          Q     And were all of these documents  
12     produced in discovery to IPG?

13          A     Yes.

14                MS. PLOVNICK: So Your Honor, I move  
15     to admit MPAA Exhibits 337, 339 through 340, and  
16     342 through 345.

17                MR. BOYDSTON: Your Honor, may I voir  
18     dire the witness?

19                JUDGE BARRETT: You may.

20                MR. BOYDSTON: Thank you, Your Honor.

21                Ms. Saunders, let's look at one of  
22     these, I think the first in line, if I'm correct,

1 Ms. Plovnick, is 337. Is that right?

2 MS. PLOVNICK: That's right.

3 MR. BOYDSTON: And the questions I'm  
4 asking apply to all of them, but I want to look  
5 at one just so that we're all on the same page.

6 MS. PLOVNICK: Sure.

7 MR. BOYDSTON: Now my understanding in  
8 looking at 337, if you could turn to the second  
9 and third pages which list the programs.

10 JUDGE BARRETT: I'm sorry. These are  
11 marked as restricted.

12 MR. BOYDSTON: Oh, thank you, Your  
13 Honor.

14 JUDGE BARRETT: For those of you in  
15 the courtroom who have not signed the  
16 confidentiality agreement, if you could wait out  
17 in the anteroom please so we can conclude this  
18 portion of the testimony.

19 MR. BOYDSTON: May I continue?

20 JUDGE BARRETT: You may.

21 VOIR DIRE EXAMINATION

22 MR. BOYDSTON: Ms. Saunders, so these

1 lists, I think you testified yesterday very  
2 clearly, these came from Mr. Whitt, correct?

3 THE WITNESS: Yes.

4 BY MR. BOYDSTON:

5 Q I guess, technically speaking, well,  
6 no, I guess all the ones that we're concerned  
7 with here would have been Mr. Whitt since he was  
8 doing these through 2009 and maybe a little  
9 beyond.

10 A Actually it would have been the  
11 accounting firm Resnick that prepared these  
12 certifications reports for us in 2009. But it  
13 was a similar arrangement, all are outside  
14 vendors.

15 Q Okay, I understand. But before that  
16 it was IT Processing which is Mr. Whitt's  
17 company?

18 A For many years, yes.

19 Q Yes, okay. Now when these were  
20 created they were brought over, you said, in  
21 paper format and then manually put together with  
22 the certifications, and that's how this exhibit

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1 and the others were created, right?

2 A That is my understanding, yes.

3 Q So these were not -- and now were  
4 these used when you created the appendices to  
5 your declaration in May or around May of this  
6 year?

7 A Remind me please what my declaration  
8 in May of this year was.

9 Q That your declaration, and I thought  
10 it was May. If I'm wrong, I apologize. You have  
11 a declaration which you attached Appendices A and  
12 B --

13 A Oh, my testimony. My testimony.

14 Q Yes, your testimony.

15 A I'm so sorry. Yes, I believe that,  
16 well, the certification reports, as I have said  
17 or testified prior, are the basis for Exhibits A  
18 and B that are appended to my testimony in both  
19 the cable and the satellite proceedings.

20 Q And when you say they're the basis for  
21 it, is what you're saying is that they were used  
22 to create those documents?

1           A       The Exhibit A and B only, well, with  
2       respect to the lists of titles that are in the  
3       exhibits, Exhibit B, I think it is, it would have  
4       been all the titles except those that have been,  
5       as you can see here on the allocations, crossed  
6       out. That title would not be in mine, or should  
7       not be.

8           Q       Okay. And what about, so these were  
9       not used to create Exhibit A or --

10          A       Oh, I'm so sorry. With respect to  
11       claimants, yes, the certification report would --

12               MS. PLOVNICK: Your Honor, could he  
13       direct -- you know, this is already in the  
14       record. Her written testimony has been admitted,  
15       and I think he's confusing Ms. Saunders about  
16       which part of it he's asking her.

17               MR. BOYDSTON: Sorry, I'm not trying  
18       to.

19               JUDGE BARRETT: Well, is this voir  
20       dire on the admissibility of these certifications  
21       or is this cross examination, Mr. Boydston?

22               MR. BOYDSTON: Your Honor, I'm trying



1 to understand where these come from and what  
2 they've been used for.

3 MS. PLOVNICK: Your Honor, I --

4 JUDGE BARRETT: That's asked and  
5 answered.

6 MR. BOYDSTON: Okay.

7 MS. PLOVNICK: We did this at length  
8 yesterday.

9 JUDGE BARRETT: I said it was asked  
10 and answered, Ms. Plovnick.

11 Any other voir dire for the witness  
12 with regard to these exhibits?

13 MR. BOYDSTON: Yes. I can obtain that  
14 right now, Your Honor.

15 In focusing on Exhibit 337, the  
16 program lists, they came from Mr. Whitt and his  
17 database and then after that from the other  
18 entity?

19 THE WITNESS: You keep using that  
20 word, Mr. Boydston. You clearly have a  
21 partiality to the word database. And I will say  
22 it more clearly than I did yesterday. Data is

1 not a database. You can have lots of data, it is  
2 not a database.

3 I do not know if Mr. Whitt had a  
4 database. I do know that he had data and based  
5 on that data he generated these lists.

6 MR. BOYDSTON: Fair enough.

7 Nothing further, Your Honor. Oh,  
8 well, I do have -- that's the end of the voir  
9 dire. I do renew the same objection that these  
10 are created from information that we asked for  
11 that was not given to us, and the witness has  
12 testified that the information was passed on to  
13 counsel prior to us asking for it, and so I renew  
14 my objection.

15 JUDGE BARRETT: Overruled.

16 MR. BOYDSTON: Your Honor, to make it  
17 clear for the record, MPAA was trying to admit  
18 not just this document of course but all the ones  
19 that she stated. My objection was as to all  
20 stated, and I understand you're overruling it to  
21 all stated.

22 JUDGE BARRETT: Correct. Thank you,

1 Mr. Boydston. So Exhibits 337, 339 through '40,  
2 and 342 through '45 are admitted.

3 (Whereupon, the above-referred to  
4 documents were received into evidence  
5 as MPAA Exhibit Nos. 337, 339-340 and  
6 342-345.)

7 MS. PLOVNICK: Thank you, Your Honor.

8 Now Ms. Saunders, you heard Mr. Galaz  
9 testify earlier in this proceeding about IPG  
10 receiving payment for international CMOs such as  
11 AGICOA and CCC?

12 THE WITNESS: Yes.

13 DIRECT EXAMINATION (continued)

14 BY MS. PLOVNICK:

15 Q Do you recall Mr. Galaz's testimony  
16 about that?

17 A I certainly do.

18 Q And are you involved with AGICOA and  
19 CCC?

20 A Yes. As I have previously testified,  
21 I am directly responsible for CCC operations. I  
22 am the chairman of the CCC board. MPAA actually

1 founded CCC more than, it's more than two decades  
2 ago but close enough.

3 They were a co-founder of AGICOA in  
4 the late '80s. I have worked within AGICOA as a  
5 member of the identification committee. I am  
6 currently on the executive committee or the  
7 executive board.

8 I'm also on the AGICOA finance  
9 committee and I'm intimately involved with the  
10 operations of both CMOs. Familiar with, I should  
11 say. I don't have that much time in my day, but  
12 I am familiar with.

13 Q So I direct your attention to IPG  
14 Exhibit 104, if you can find that please. That  
15 would be in one of IPG's exhibit binders. And  
16 this is already admitted. Let me know when you  
17 have it.

18 A What's the number again?

19 Q It is IPG Exhibit 104.

20 (Off the record discussion)

21 MS. PLOVNICK: Oh yes, this exhibit is  
22 not restricted, I don't believe.

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1 JUDGE BARRETT: Thank you.

2 Ms. Saunders.

3 (Off the record discussion)

4 MS. PLOVNICK: Okay, so you have IPG  
5 Exhibit 104?

6 THE WITNESS: I do. I have IPG 104,  
7 yes.

8 BY MS. PLOVNICK:

9 Q And do you remember Mr. Galaz  
10 testifying about this document?

11 A Yes, I do.

12 Q And based on your own personal  
13 knowledge from your work with the CCC and AGICOA  
14 was Mr. Galaz's characterization accurate?

15 A No, it was not.

16 Q Well, can you explain?

17 A Mr. Galaz implied, or actually, I  
18 think, stated that the payment or the receipt by  
19 IPG retransmission royalty payments from both the  
20 CCC and AGICOA was somehow probative or  
21 indicative of IPG's entitlement to represent  
22 certain claimants on whose behalf he had received

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1 these monies.

2 And I can assure you that in no way is  
3 that correct. The receipt of retransmission  
4 royalties from a CMO in a given country is not  
5 only not probative, it is in no way indicative of  
6 the right to receive retransmission royalties in  
7 an entirely different country such as the United  
8 States.

9 Q And what country is the CCC in?

10 A Canada.

11 Q And where does AGICOA operate?

12 A AGICOA operates around the world. But  
13 one has to, specifically when registering claims  
14 for titles, indicate for which countries one that  
15 holds the rights and is able to be paid. And I  
16 do not recall any testimony by IPG that the  
17 royalties they had received from AGICOA came from  
18 the United States.

19 I also happen to know that AGICOA does  
20 not claim, currently, any U.S. retransmission  
21 royalties through, they don't claim any  
22 retransmission royalties in the United States.

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1           Q     And is IPG identified on those  
2 documents as receiving the funds?

3           A     Well, that's a good question. I do  
4 not, I don't see, frankly, any reference to IPG.  
5 I see a list of titles. And again simply the  
6 compensation by AGICOA or sending some royalty or  
7 remunerations for titles again is in no way  
8 indicative or probative, certainly not probative,  
9 of rights that one may hold elsewhere.

10                   In fact, MPAA in this proceeding  
11 represents, and in respect of our administration  
12 of U.S. royalties, represents an enormous number  
13 of claimants that in the United States for  
14 purposes of claiming U.S. royalties that are  
15 represented by agents such as Compact, Fintage or  
16 IFTA that are represented by those agents within  
17 AGICOA.

18                   JUDGE STRICKLER: If I may interrupt,  
19 Ms. Saunders, you said a moment ago that AGICOA  
20 does not now seek retransmission royalties in the  
21 United States. How about during the years in  
22 question in this proceeding?

1 THE WITNESS: To my recollection, Your  
2 Honor, is that AGICOA filed a claim one time for  
3 U.S. retransmission royalties. They filed it  
4 with the MPAA. We worked extremely hard to find  
5 a single incidence of a retransmitted title that  
6 AGICOA claimants could claim in the United  
7 States.

8 Now I can't tell you for certainty  
9 that they asserted that claim in respect of every  
10 single program they represented. They may have  
11 taken a representative sample.

12 But the fact is, when you're dealing  
13 in a world of distant signal compensation or  
14 compensation for distant signal retransmission of  
15 programs that are broadcast at least in the cable  
16 fund on non-network stations, that scope is very,  
17 very small.

18 And to the represented claimants by  
19 AGICOA on whose behalf they were filing, because  
20 as I've said before, AGICOA, well, perhaps I  
21 didn't make this clear.

22 AGICOA doesn't, for example, have the

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1 right to claim retransmission royalties in the  
2 United States for many of its claimants because  
3 those claimants claim directly with MPAA. The  
4 reason for that is why would you pay two  
5 administration fees for royalties you can claim  
6 yourself directly?

7 So many of AGICOA claimants, at least  
8 U.S. producers have affiliated directly with  
9 MPAA. They claim royalties in the U.S. directly  
10 through MPAA. They don't need AGICOA for that.

11 So AGICOA is left with a basket of  
12 claimants that are largely European and whose  
13 licensing deals in the United States are such  
14 that they may go on cable-only channels, they may  
15 be licensed to network channels, but we could not  
16 find a way to pay them.

17 And I think the year that they filed  
18 that I recall most particularly, and I cannot  
19 tell you which of the royalty years, if it was  
20 one of these or a later one, I think they might  
21 have been entitled to \$700.

22 And they concluded and they informed

1 me that they would no longer claim retransmission  
2 royalties in the United States because it really  
3 wasn't worth the time and the effort.

4 JUDGE STRICKLER: Thank you.

5 MS. PLOVNICK: And so Ms. Saunders,  
6 let me direct your attention to what's already  
7 been admitted as MPAA Exhibit 336.

8 THE WITNESS: Hold on.

9 MS. PLOVNICK: That's in the orange  
10 binder so we can put the red binder away.

11 THE WITNESS:

12 BY MS. PLOVNICK:

13 Q So were these certifications executed  
14 by ABC Family?

15 A Correct. Formerly known as Fox  
16 Family, yes..

17 Q Formerly known as Fox Family. So  
18 during Mr. Galaz's testimony he talked about the  
19 title of Dragon Ball Z, and do you see that title  
20 on these certifications?

21 A I certainly do.

22 Q Okay. So now let me direct your

1 attention to what's been premarked as MPAA  
2 Exhibit 306 and that's in the other orange  
3 binder.

4 A Okay, got it.

5 Q Okay, so what is that document?

6 A This is the Federal Register, a copy  
7 of a decision in the Federal Register, Volume 66  
8 Number 247 dated December 26, 2001, and it's an  
9 opinion or an order from the Library of Congress  
10 in Docket Number 2000-2 CARP CD 93-97 regarding  
11 distribution of 1993, '94, '95, '96 and '97 cable  
12 royalty funds.

13 Q Thank you, Ms. Saunders. Can you  
14 please turn to Page 66435 of that decision?

15 A Yes, ma'am. Got it.

16 MS. PLOVNICK: Your Honor, I'm going  
17 to move this in. I don't know if I need a little  
18 bit more foundation to link this to the title  
19 Dragon Ball Z. I'm going to do that in one more  
20 question, but if you want me to move it now I'm  
21 happy to do that.

22 JUDGE BARRETT: Well, it's a published

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1 record. I don't know how much foundation you  
2 need to lay for that.

3 Mr. Boydston, any objection?

4 MR. BOYDSTON: No, Your Honor.

5 JUDGE BARRETT: Mr. MacLean?

6 MR. MACLEAN: No, Your Honor.

7 MR. BOYDSTON: Your Honor, I just  
8 would like to note it was vacated, but it is  
9 public record.

10 JUDGE BARRETT: You'll have a chance  
11 to talk about that, Mr. Boydston. 306 is  
12 admitted.

13 (Whereupon, the above-referred to  
14 document was received into evidence as  
15 MPAA's Exhibit No. 306.)

16 MS. PLOVNICK: Thank you, Your Honor.

17 So now Ms. Saunders, if you could look  
18 at Page 66435 of admitted MPAA Exhibit 306. And  
19 if you look in the right hand column near the top  
20 of the page, subsection D over there. Do you see  
21 that?

22 THE WITNESS: I do.

1 BY MS. PLOVNICK:

2 Q Do you see the title, Dragon Ball Z,  
3 discussed?

4 A I do.

5 Q All right. So Ms. Saunders, if you'd  
6 please read into the record the second full  
7 sentence there which starts with the words, "The  
8 CRB determined."

9 A "The CRB determined that Fox Family  
10 Worldwide, not Funimation Productions, was the  
11 proper syndicator for Dragon Ball Z and therefore  
12 IPG was not entitled to a distribution for this  
13 program."

14 Q Okay, and I think you previously  
15 testified that ABC Family was formerly known as  
16 Fox Family Worldwide?

17 A I did. It's on the certification  
18 report under their signature.

19 Q So what do you conclude from comparing  
20 MPAA Exhibit 306 and 336?

21 A That Fox Family is -- I'm sorry, hold  
22 on. I want to make sure I get the right name

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1 here. That ABC Family Worldwide, formerly known  
2 as Fox Family Worldwide, is the proper claimant  
3 for Dragon Ball Z.

4 Q Now I'm going to have you look at  
5 what's already been admitted as IPG Exhibit 22  
6 which is in another IPG binder over there.

7 (Off the record discussion)

8 MS. PLOVNICK: So Ms. Saunders, what  
9 is IPG Exhibit 22?

10 THE WITNESS: This appears to be or  
11 this is a copy of a page that's from the  
12 copyright office records, the public catalog. It  
13 is a page pertaining to Dragon Ball Z, a  
14 particular episode that I will not attempt to  
15 pronounce, and it appears to be an application  
16 for copyright.

17 BY MS. PLOVNICK:

18 Q Is this a search of the public  
19 catalog?

20 A It's a search of the public catalog.  
21 That is correct.

22 Q So does this document tell you who

1 controls the right to collect retransmission  
2 royalties for Dragon Ball Z?

3 A In no way, shape or form.

4 Q Why not?

5 A Because when programs are copyrighted  
6 they are subsequently licensed.

7 MR. BOYDSTON: Your Honor. I object.  
8 This calls for the expert opinion. She's not  
9 been qualified as an expert in that regard.

10 JUDGE BARRETT: It's not calling for  
11 expert opinion, but foundation is insufficient in  
12 any event.

13 Ms. Polnick, ask some more questions.

14 MS. PLOVNICK: Ms. Saunders, based on  
15 your personal knowledge, based on your experience  
16 at MPAA and also with the other lines of work  
17 that you do, do you know if a public search of  
18 copyright records would dictate who is the proper  
19 claimant for retransmission royalties?

20 THE WITNESS: In my experience it  
21 would not. It would be probative of the  
22 possibility that the claimant or the applicant

1 for copyright and even the owner of copyright may  
2 have the right to claim retransmission rights,  
3 but retransmission rights are a separate  
4 exclusive right that are fully assignable as a  
5 matter of contract law and frequently are  
6 assignable, or assigned, excuse me.

7 So the fact that one might be a  
8 copyright owner, unless one can also demonstrate  
9 if challenged that you have currently the rights  
10 to license the title and have retained  
11 retransmission rights in any license you may have  
12 entered into with a licensee -- I got myself a  
13 little turned around in there.

14 But I know what I'm saying is unless  
15 you could demonstrate that the mere holding of  
16 copyright is insufficient.

17 BY MS. PLOVNICK:

18 Q How do you know that, Ms. Saunders?

19 A Because I deal with conflicting  
20 claims. One of my primary jobs within the MPAA  
21 as well as the CCC is to deal with conflicting  
22 claims among claimants.



1 I also, in my capacity, in my role at  
2 the MPAA, from time to time I see excerpts of  
3 licensing agreements between claimants, including  
4 our studios, and I know for a certainty that  
5 retransmission rights are, I don't want to say  
6 frequently, but they can be and are granted.

7 It's often to a broadcaster. That is  
8 a very normal and standard business practice when  
9 licenses are executed with broadcasters, for  
10 example. They can be granted to syndicators.  
11 They can be granted to distributors. It's a  
12 negotiated item.

13 Q All right. Thank you, Ms. Saunders.  
14 So has MPAA ever encountered a situation where  
15 two parties claimed to work with the same name or  
16 a similar title and the two works were really  
17 different?

18 A Yes, it happens all the time,  
19 particularly with movies, titles with movies are  
20 often the same.

21 Q All right. So let me direct your  
22 attention to Exhibit 337, which has already been

1 admitted. This is a certification for Allied  
2 Communications. And do see the title, Victim of  
3 Love, on this certification?

4 JUDGE BARRETT: That's one I missed --

5 MS. PLOVNICK: Oh, I'm sorry. It is  
6 337.

7 COURT REPORTER: I'm sorry, Your  
8 Honor. Could you repeat that?

9 JUDGE BARRETT: I could. I could even  
10 use the microphone. I missed the exhibit number.  
11 337, is that correct?

12 MS. PLOVNICK: 337 is the correct  
13 exhibit.

14 JUDGE BARRETT: Thank you.

15 THE WITNESS: And I do see a title,  
16 Victim of Love. Yes, it is on the next to the  
17 last page of the title attachment to that  
18 certification.

19 MS. PLOVNICK: And that was a  
20 certification for Allied Communications for 2000?

21 THE WITNESS: Yes, it is. For 2000,  
22 yes.

1 BY MS. PLOVNICK:

2 Q Okay. So now let me direct your  
3 attention to MPAA Exhibit 305 which has already  
4 been admitted and it's in the other binder.

5 JUDGE STRICKLER: What Bates Number  
6 page is Victim of Love?

7 MS. PLOVNICK: I'm sorry?

8 JUDGE STRICKLER: The Bates, I'll ask  
9 counsel. Do you have it?

10 MS. PLOVNICK: I don't actually have  
11 it.

12 JUDGE STRICKLER: You said next to the  
13 last page.

14 THE WITNESS: I have it. It's Bates  
15 Stamp S as in Sam, 04266, and there's a hole  
16 punched through the last number. But it might be  
17 a 6 because the next one is 7.

18 MS. PLOVNICK: And it's Exhibit 337.

19 And oh, I'm sorry. I'm not really  
20 going to get into the contents of it, but --

21 MR. BOYDSTON: I'm sorry. We're on  
22 Exhibit 335. Is that correct?

1 MS. PLOVNICK: 305.

2 MR. BOYDSTON: Excuse me. Thank you.

3 MS. PLOVNICK: Okay. So Ms. Saunders,  
'4 do you have MPAA Exhibit 305?

5 THE WITNESS: Yes, I do.

6 BY MS. PLOVNICK:

7 Q All right, so can you please turn to  
8 transcript pages 1887 and 1888, the first portion  
9 of that exhibit.

10 A Yes, I have them.

11 Q Who's testifying in this transcript  
12 excerpt?

13 A This is Marsha Kessler, the famous  
14 Marsha Kessler.

15 Q And what topic is she addressing?

16 A She is addressing a program entitled,  
17 Victim of Love.

18 Q And if you take a look at Page 1888 or  
19 1888, what does Ms. Kessler explain on that page?

20 A Ms. Kessler explains that as I have  
21 just stated, titles are often the same and  
22 therefore there can be confusion among claimants

1 as to which title is actually being claimed.

2 She refers to the title, Victim of  
3 Love, saying that it is a movie and that there  
4 are actually two movies called "Victim of Love"  
5 that are in no way related to one another. She  
6 goes on to make an entertaining comparison  
7 between Gone With the Wind and Wizard of Oz.

8 Q All right. So now do you see  
9 references made to MPAA Exhibit 14 in the  
10 transcript?

11 A Yes, exactly. Yes, I do, so at the  
12 very bottom of 1888.

13 Q So if you flip to the back of MPAA  
14 Exhibit 305, MPAA Exhibit 14 should be there.  
15 And do you see that document?

16 A Hang on a second. Oh, okay, yes. I  
17 see MPAA Rebuttal Exhibit 14, yes.

18 Q Okay. Could you flip to the page that  
19 has the title information about Victim of Love?

20 A Yes. It appears to be an IMDB extract  
21 or a copy of an IMDB page, and it shows there are  
22 two works entitled "Victim of Love" that are

1 listed one after the other.

2 The first is Victim of Love, which is  
3 a 94-minute, 1992 drama or telefilm featuring  
4 Pierce Brosnan about a deadly love triangle  
5 between a psychiatrist and a patient and a man.

6 The next one is Victim of Love, the  
7 Shannon Mohr, M-O-H-R, story, which is a 120-  
8 minute telefilm directed by, starring no one I've  
9 ever heard of and directed by John Cosgrove.

10 Q So one of those is related to Cosgrove  
11 and one is not?

12 A Yes. One is directed by Cosgrove and  
13 the other is directed by Jerry London.

14 Q Is MPAA claiming the Cosgrove title?

15 A No, we are not. My understanding is  
16 we are claiming the Victim of Love, the Pierce  
17 Brosnan, sorry, directed by Jerry London title.

18 Q So was this issue regarding Victim of  
19 Love or the difference between the two Victim of  
20 Loves, is that previously litigated between MPAA  
21 and IPG?

22 A I believe so, since the beginning of

1 Exhibit 305 is an extract of the CRB hearing in  
2 the matter of distribution of '93, '94, '95, '96  
3 and '97 cable royalties.

4 MR. BOYDSTON: Your Honor, I'll move  
5 to strike just because it doesn't appear she has  
6 personal knowledge of that. She's simply relying  
7 on this document and she's testified that she  
8 wasn't involved in these matters in her present  
9 position in the time in question.

10 JUDGE BARRETT: Sustained. The  
11 document's in evidence.

12 MS. PLOVNICK: So Ms. Saunders, when  
13 Mr. Galaz testified he talked a lot about MPAA's  
14 representation of agents. Does MPAA represent  
15 agents?

16 THE WITNESS: Yes, we do.

17 BY MS. PLOVNICK:

18 Q And does MPAA also represent the  
19 copyright owners that those agents represent?

20 A Yes, we do.

21 Q So how does that work?

22 A Our certification form specifically

1 indicates, and you can look at any one of them to  
2 see it, that we represent or will accept claims  
3 on behalf of owners, agents of owners or  
4 entities, the representative of an entity that's  
5 entitled to claim the royalties.

6 Q Does MPAA's representation agreement  
7 also address --

8 A Yes, it does.

9 Q -- agents?

10 A Our representation agreement has a  
11 specific section for representation. I think I  
12 testified to this on Monday.

13 Q Yes, you did. So does MPAA routinely  
14 ask claimants to provide documentation supporting  
15 their representation of entities that they list  
16 on joint claims or agent claims?

17 A No. No, we do not. Not for the  
18 agents that we currently represent. We have that  
19 prerogative in our representation agreement. but  
20 thus far the agents that we have represented, and  
21 I can mention a few that have been talked about  
22 in this proceeding, Screenrights, Fintage, EGEDA,

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1 IFTA and Compact, those agents are all very well  
2 known to be personally and professionally, I work  
3 with them all the time. I know claimants that  
4 they represent.

5 I serve on the board of collecting  
6 societies with many of them. MPAA itself, might  
7 not me personally, but MPAA colleagues are on the  
8 board of EGEDA. So I am very familiar with those  
9 entities. I have met, as I said, personally many  
10 of the claimants they represent, and -- I thought  
11 I had another point but I'll just leave it at  
12 that.

13 Q So you're very familiar from your own  
14 personal work and experience --

15 A Yes, yes.

16 Q -- with many of these agents?

17 A Yes. What I was going to say is I  
18 have seen, for Screenrights and EGEDA in  
19 particular and I believe we also have in some of  
20 the exhibits that have been put before this  
21 court, exemplars of representation agreements by  
22 Fintage, but I am quite familiar with the

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1 membership agreements that EGEDA has with its  
2 members as well as with those that Screenrights  
3 has with their members.

4 And -- go ahead.

5 Q Is that from your personal experience  
6 working with --

7 A Yes, of course.

8 Q All right. And you say you're  
9 familiar with all of those documents. All right.

10 A Yes.

11 Q Okay, let me -- are you aware that --  
12 you stated earlier you reviewed IPG's written  
13 rebuttal statement in this proceeding. Is that  
14 correct?

15 A Yes.

16 Q You're aware that IPG challenged the  
17 authority of MPAA to represent certain MPAA-  
18 represented copyright owners in that filing?

19 A Represented copyright owners who were  
20 themselves represented by agents.

21 Q So what, if any, action did you take  
22 in response to IPG's --

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1           A       Oh, I directed my counsel to inquire  
2 with each of those agents to substantiate or tell  
3 us, talk to us about the basis to confirm the  
4 representation of underlying copyright owners and  
5 to provide us some explanation particularly with  
6 regard to the claimants and the works that IPG  
7 challenged.

8           JUDGE BARRETT: Ms. Saunders, I'm just  
9 going to remind you not to begin your answer  
10 until the question is finished.

11          THE WITNESS: Sorry.

12          MS. PLOVNICK: Yes, and I'll try to do  
13 a better job of that too. I'm talking a little  
14 slow, I guess. So to your knowledge did your  
15 attorneys do as you requested?

16          THE WITNESS: Yes, they --

17          MR. BOYDSTON: Objection, Your Honor.  
18 Calls for hearsay, and it's really double  
19 hearsay. I understand she's saying she asked her  
20 attorneys to do something, technically that's  
21 hearsay but I wasn't going to object to that.

22               Now she's asking what the attorneys

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1 did and what they heard, and that is at least  
2 double hearsay if not triple. So objection on  
3 hearsay.

4 JUDGE BARRETT: Sustained.

5 You can re-form the question, Ms.  
6 Plovnick.

7 MS. PLOVNICK: All right.

8 Do you know if your attorneys took any  
9 action in response to --

10 THE WITNESS: Well, what I do know is  
11 that I received a series of letters from these,  
12 many of these claimants directed to me personally  
13 that began to arrive in my office sometime during  
14 the month of November.

15 BY MS. PLOVNICK:

16 Q All right, so let me direct your  
17 attention to MPAA Exhibit 346.

18 A Yes.

19 Q Have you seen this before?

20 A Yes, I have.

21 Q And what is it?

22 A This is a letter to me sent by Marcel

1 Hoogenberk of Fintage. Marcel and I have worked  
2 together for many years, and he describes or  
3 responds to, or actually he expresses great  
4 surprise that IPG would challenge --

5 Q Ms. Saunders.

6 A Oh, I'm sorry.

7 Q Before you get into the substance  
8 there, so is Fintage a claimant addressed in  
9 IPG's written rebuttal statement?

10 A It is.

11 Q And is MPAA Exhibit 346 a true and  
12 correct copy of the correspondence that you  
13 received from Marcel Hoogenberk of Fintage?

14 A Yes, it is.

15 MS. PLOVNICK: All right. So I move  
16 to admit MPAA Exhibit 346.

17 MR. BOYDSTON: Your Honor, I'll  
18 object. It's hearsay. I also know it is not a  
19 declaration. It's not been signed under penalty  
20 of perjury and therefore it differs in  
21 substantial regard from a legal standpoint from  
22 the declarations that we are regularly admitting

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1 in these proceedings. That's my objection.

2 MS. PLOVNICK: Your Honor, this is a  
3 business record of Ms. Saunders' and she is  
4 testifying here that she received this in her  
5 normal course of business.

6 JUDGE BARRETT: Well, for what  
7 purposes is it being offered? For the truth of  
8 the matter or for the fact that it was received?

9 MS. PLOVNICK: It is being offered for  
10 the fact that she received it and that she  
11 requested her claimants to send her  
12 documentation, and it was sent. So it's being  
13 admitted as an MPAA business record.

14 So also, Your Honor, we have an  
15 understanding in these proceedings based on the  
16 regulations that hearsay is permitted. So --

17 JUDGE BARRETT: May be permitted.

18 MS. PLOVNICK: May be permitted, Your  
19 Honor. So we believe that hearsay is admissible  
20 in these proceedings. We've seen many other  
21 documents admitted here in this correspondence  
22 with IPG's claimants that were admitted as IPG

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1 business records. And so we would ask that it be  
2 admitted on that basis.

3 JUDGE BARRETT: You need to lay the  
4 foundation then for a business record.

5 MS. PLOVNICK: Okay. Yes, Your Honor.

6 MR. BOYDSTON: I was just going to say  
7 the business record exception would simply lay a  
8 foundation. It would not address the hearsay  
9 matter.

10 JUDGE BARRETT: Well, let's get the  
11 foundation.

12 MS. PLOVNICK: Okay.

13 So Ms. Saunders, is this a business,  
14 did you receive this document for a normal course  
15 of business at MPAA?

16 THE WITNESS: Yes.

17 BY MS. PLOVNICK:

18 Q And is this a document that you would  
19 maintain as a business record at MPAA?

20 A Yes.

21 Q And it's in fact a letter that you  
22 personally received at your office?

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1           A       Yes. It is a letter that I more or  
2 less I requested.

3           Q       And, but it is maintained in your  
4 office?

5           A       Yes.

6           Q       And you, please just describe the  
7 chain of custody of how that letter was --

8           A       Well, as I said, I asked my counsel to  
9 confirm MPAA's representation of --

10          Q       No, for this letter. So it was you  
11 received it then?

12          A       Oh. I received it and I tendered it  
13 to my counsel.

14          Q       And your counsel then included it --

15          A       Yes, they have included it, I  
16 understand, as part of our rebuttal, no? Or --

17               MR. BOYDSTON: I'll object. That  
18 calls for speculation. But I will believe the  
19 point on the business record. I think she's  
20 established that. I'll stipulate the business  
21 record. That doesn't address the hearsay though.

22               MS. PLOVNICK: And our response is



1 that hearsay is permitted.

2 MR. MACLEAN: Your Honor.

3 JUDGE BARRETT: Mr. MacLean.

4 MR. MACLEAN: May I voir dire on this  
5 exhibit?

6 JUDGE BARRETT: You may. Might as  
7 well.

8 VOIR DIRE EXAMINATION

9 MR. MACLEAN: Ms. Saunders, was this  
10 record received and kept in the regular course of  
11 MPAA's business?

12 THE WITNESS: Yes, it was.

13 MR. BOYDSTON: Your Honor, asked and  
14 answered and stipulated to, and we're tight on  
15 time.

16 MR. MACLEAN: Your Honor, based on  
17 that I have no objection to this record as a  
18 business record which is an exception to the  
19 hearsay rule even under the federal rules of  
20 evidence.

21 MR. BOYDSTON: It is in regard to  
22 foundation, it is not regarding to hearsay.

1 JUDGE BARRETT: Just a minute please.  
2 Thank you. I will now read.

3 MR.. BOYDSTON: I beg your pardon?

4 JUDGE BARRETT: I said I will now  
5 read.

6 MS. PLOVNICK: Your Honor, before you  
7 make a ruling, I also wanted to add two points.  
8 First, in the 1997 Cable Phase II proceeding, I  
9 know from in review of that record that there  
10 were letters that were admitted as business  
11 records in that proceeding from claimants.

12 JUDGE BARRETT: Ms. Plovnick, if you  
13 want my ruling --

14 MS. PLOVNICK: I'm sorry.

15 MR. BOYDSTON: Your Honor, if I could  
16 just address that current --

17 JUDGE BARRETT: No, you may not. I'm  
18 striking it because I've already heard everything  
19 I need to hear on the 803 of the whatever  
20 exception to the hearsay rule. Your objection's  
21 overruled. The exhibit is admitted.

22 (Whereupon, the above-referred to

1 document was received into evidence as  
2 MPAA Exhibit No. 346.)

3 MS. PLOVNICK: Thank you, Your Honor.

4 MR. BOYDSTON: Your Honor, just for  
5 the record, may I just point out that this was  
6 prepared in response to these things and it could  
7 have been made into a declaration but was not.

8 JUDGE BARRETT: You've made your point  
9 on the record, Mr. Boydston. Thank you.

10 MS. PLOVNICK: Ms. Saunders, if you  
11 look at MPAA Exhibit 346, where is Fintage based?

12 THE WITNESS: In the Netherlands.

13 DIRECT EXAMINATION (continued)

14 BY MS. PLOVNICK:

15 Q And is Fintage an individual claimant  
16 or an agent claimant?

17 A They are an agent claimant.

18 Q All right. So if you look at MPAA  
19 Exhibit 341, this exhibit contains Fintage  
20 certifications. In what capacity did Fintage,  
21 and they may also say in the letter which is MPAA  
22 Exhibit 347 that, do you know what capacity

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1 Fintage represents its claimants?

2 A Yes, I do. And when I said agent I am  
3 merely using MPAA's vernacular. We consider them  
4 an agent even though they execute all their  
5 certifications as the representative of the  
6 assignee of the underlying retransmission rights  
7 and that is the basis on which they have  
8 maintained their claims in regards to or the  
9 representation of each of these entities that  
10 were challenged by IPG, Bell Phillip, Televisa,  
11 TV Azteca and EGEDA.

12 Q So in MBAA Exhibit 346, what issues  
13 does Mr. Hoogenberk address in his letter?

14 A Well, he first addresses where it  
15 mentions his great surprise that IPG would  
16 challenge the representation by Fintage of the  
17 entities I just mentioned, because, and attaches  
18 to the correspondence, rather, a copy of a joint  
19 notice that was sent to Tanya Sandros of the  
20 copyright office from Fintage and IPG expressly  
21 confirming, I guess, based on a settlement  
22 agreement, because heretofore Fintage and IPG

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1       apparently collaborated in some respect in terms  
2       of asserting claims.

3               MR. BOYDSTON: Your Honor, I want to  
4       object on the same grounds that were objections  
5       raised for, that Your Honor directed us that when  
6       we have a declaration in the record already the  
7       witness should not simply recite it or go into  
8       it. So for the same reasons, I think the record  
9       speaks for itself now that it's admitted.

10              JUDGE BARRETT: Sustained.

11              MS. PLOVNICK: We have questions.

12              JUDGE BARRETT: Is there questions,  
13       Ms. Plovnick?

14              MS. PLOVNICK: Is the documentation  
15       you just referenced attached to the letter?

16              THE WITNESS: It is.

17              BY MS. PLOVNICK:

18              Q       And is there other documentation  
19       attached to the letter?

20              A       Yes, there are two lists of claimant  
21       names. Attached is Exhibit 1-2, the joint  
22       letter that indicate which entities will be

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1 represented by Fintage and which will be  
2 represented by, I guess, ICG is another dba for  
3 IPG -- boy, that was a lot of acronyms -- with  
4 their separate list of entities and I think IPG  
5 represents.

6 Q So Ms. Saunders --

7 JUDGE BARRETT: I'm sorry. It's ACG.

8 THE WITNESS: ACG. Oh, excuse me,  
9 thank you.

10 MS. PLOVNICK: So, and Mr. Hoogenberk,  
11 there are other attachments to his letter?

12 THE WITNESS: Oh yes. I'm so sorry,  
13 yes. I only got to the first couple.

14 BY MS. PLOVNICK:

15 Q So what are they?

16 A He has attached exemplars of Fintage's  
17 representation agreements.

18 Q For which claimants, I guess.

19 A Oh, all right. Hang on. You have to  
20 give me a second here. Bell Phillips regarding  
21 DBL Distribution.

22 MR. BOYDSTON: Your Honor, I'm going

1 to object to the attachments because that's a  
2 second level of hearsay. And so the letter is  
3 one level, this is now a completely second level  
4 of hearsay. I object on that ground.

5 JUDGE BARRETT: Mr. Boydston, Exhibit  
6 3 to the Fintage House letter is a joint venture  
7 representation agreement, the joint venture being  
8 between Fintage and WSG. I believe we admitted  
9 that yesterday at your request.

10 MR. BOYDSTON: You're right, and I  
11 have no objection to that. But these others I do  
12 object to because they're second and I think a  
13 third level of hearsay.

14 JUDGE BARRETT: Overruled. Go ahead.

15 MS. PLOVNICK: So Ms. Saunders, I'm  
16 not going to belabor the point as this document  
17 is already in the record, but do you see in there  
18 agreements for Televisa, TV Azteca --

19 THE WITNESS: Yes, TV Azteca, EGEDA  
20 and some others. Yes, I do.

21 BY MS. PLOVNICK:

22 Q And some of the documentation in there

1 is actually between some Fintage claims and IPG,  
2 I believe, especially with regard to Bell  
3 Phillips?

4 A There is voluminous correspondence in  
5 here and if you give me --

6 Q So anyway, can you confirm that there  
7 is correspondence in there which is directed at  
8 IPG?

9 A Oh yes, I can. I see it now, yes.

10 Q And were those documents ever produced  
11 to MPAA in discovery?

12 A To my understanding they were not.

13 Q All right.

14 MR. BOYDSTON: Your Honor, I'm going  
15 to object additionally to these documents on the  
16 grounds that they were never produced in  
17 discovery by the MPAA.

18 Now obviously I'm not referring to IPG  
19 documents, but I am referring of course to the  
20 non-IPG documents which they never produced in  
21 discovery despite our requests for all evidence  
22 of agreements with the owners of copyright. And



1 they were directed, first, in that regard of --

2 JUDGE BARRETT: Mr. Boydston, the  
3 legal basis of the objection is generally  
4 sufficient without the narrative.

5 MR. BOYDSTON: Thank you, Your Honor.

6 JUDGE BARRETT: Ms. Plovnick, how do  
7 you respond to the objection?

8 MS. PLOVNICK: Well, I respond that  
9 MPAA first received these records on the date of  
10 the Fintage letter which was in November.

11 THE WITNESS: November 21st.

12 MS. PLOVNICK: November 21st of 2014,  
13 so, and they were not in MPAA's possession. And  
14 as soon as, and we received them in response to  
15 IPG, and as part of our effort to respond to  
16 IPG's written rebuttal statement.

17 So there would have been no, we  
18 wouldn't have had them and so we wouldn't have  
19 produced a document we didn't have. And I don't  
20 think it would have been an obligation for us to  
21 go, after the judges ruled that, on this as well  
22 in the July 30 order that MPAA was not required

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1 to go to its agents further to obtain further  
2 documentation unless IPG brought a further motion  
3 or made a further showing.

4 MR. BOYDSTON: Your Honor, if that's  
5 the case then I withdraw my objection. If they  
6 didn't have it time and only got it now, that's a  
7 reasonable explanation.

8 JUDGE BARRETT: Thank you.

9 Was it offered? Is that why we had  
10 the objection?

11 MS. PLOVNICK: No, Your Honor. It's  
12 already admitted.

13 JUDGE BARRETT: Oh, okay. Thank you.  
14 Yes, it was. Go ahead.

15 MS. PLOVNICK: All right.

16 All right, so Ms. Saunders, let's talk  
17 for a minute about EGEDA. Does MPAA represent  
18 EGEDA?

19 THE WITNESS: We represent EGEDA in  
20 these proceedings through Fintage.

21 BY MS. PLOVNICK:

22 Q All right. Are you familiar with

1 EGEDA?

2 A Yes, I am.

3 Q And how are you familiar with it?

4 A I don't want to belabor the point. I  
5 went into great detail about my relationship and  
6 association with EGEDA and my understanding and  
7 familiarity, knowledge of their membership  
8 agreements.

9 I can also tell the court if it's of  
10 interest that under Spanish law EGEDA is  
11 authorized by the Ministry of Culture to  
12 represent all the rights of, all the remuneration  
13 rights of all producers in Spain.

14 It is a function of something called  
15 the Spanish national implementation in their  
16 copyright act of the Cable and Satellite  
17 Directive.

18 So EGEDA is presumed to be by law in  
19 Spain the representative of Spanish producers.  
20 Furthermore, in EGEDA's membership agreements  
21 which, and the descriptions of these can be found  
22 on EGEDA's website, admittedly in Spanish but

1 it's there, the EGEDA membership terms provide  
2 that EGEDA is entitled to collect -- or sorry,  
3 not entitled -- mandated, authorized by its  
4 members, any member to claim remuneration  
5 including for retransmission around the world.

6 MS. PLOVNICK: So Ms. Saunders, I'm  
7 going to now show you what's been premarked as  
8 MPAA Exhibit 359.

9 (Off the record discussion)

10 MS. PLOVNICK: And so Ms. Saunders,  
11 what is MPAA Exhibit 359?

12 MR. BOYDSTON: Can we get it first?

13 MS. PLOVNICK: Yes. The clerk allowed  
14 us to do all of it as one.

15 So I'm sure you guys are getting  
16 copies for the judges as well.

17 So while we're doing that, so Ms.  
18 Saunders, what is MPAA Exhibit 359, or what's  
19 been premarked as MPAA Exhibit 359?

20 THE WITNESS: These are claims  
21 submitted by Fintage with the Copyright Royalty  
22 Board in respect of cable and satellite

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1 retransmission royalties. There are two from  
2 2007, one from 2008, and this one. Two from 2007  
3 and two from 2008.

4 BY MS. PLOVNICK:

5 Q And if you look, is it 2006 or 2008?

6 A I said '08.

7 Q So, but for what royalty years were  
8 they for?

9 A Oh, I'm sorry. Well, let's see.  
10 2006, which of course would have been filed in  
11 2007, right, of course. And then 2006, and all  
12 right, filing's 2006, filing's 2007. Sorry.

13 Q So you have cable claims and satellite  
14 claims for Fintage for 2006 --

15 A And for 2007.

16 Q -- and for 2007?

17 A Yes, that's correct.

18 Q And does MPAA maintain these as  
19 business records?

20 A Yes, we certainly would.

21 Q Were these documents produced to IPG  
22 in discovery?

1           A       In fact we require these in our  
2 representation unit. I'm sorry?

3           Q       So MPAA maintains these documents as  
4 business records?

5           A       Yes.

6           Q       And were they produced to IPG in  
7 discovery?

8           A       Well, they're Bates stamped so I'm  
9 going to say yes.

10           MS. PLOVNICK: All right, so I move to  
11 admit MPAA Exhibit 359.

12           MR. BOYDSTON: Your Honor, I'll  
13 object. They were produced in discovery but they  
14 weren't attached as exhibits to the MPAA  
15 rebuttal.

16           MS. PLOVNICK: Your Honor, this is our  
17 rebuttal to IPG, so --

18           JUDGE BARRETT: Overruled.

19           MR. BOYDSTON: Yes, why were they not  
20 in our exhibit book is the question?

21           JUDGE BARRETT: They're rebuttal as I  
22 understand.

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1 MS. PLOVNICK: They were rebuttal  
2 exhibits.

3 MR. BOYDSTON: Okay, can we have an  
4 offer of proof as to what they're rebutting?

5 JUDGE BARRETT: I think we're good  
6 there, and if we don't I will reconsider, okay?

7 MR. BOYDSTON: Thank you, Your Honor.

8 JUDGE BARRETT: Go ahead, Ms.  
9 Plovnick.

10 MS. PLOVNICK: So I move to admit  
11 these exhibits.

12 JUDGE BARRETT: They are admitted  
13 without prejudice.

14 (Whereupon, the above-referred to  
15 document was received into evidence as  
16 MPAA Exhibit No. 359.)

17 MS. PLOVNICK: All right. So Ms.  
18 Saunders, if you can look at MPAA Exhibit 359,  
19 do you know if, from looking at these exhibits,  
20 if Fintage listed EGEDA claimants on its claims?

21 THE WITNESS: It appears that Fintage  
22 represented, or sorry, listed on these claims the

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1 individual names --

2 JUDGE BARRETT: I'm sorry, what page?

3 THE WITNESS: I apologize, Your Honor.

4 This is, I'm now looking specifically at the  
5 cable filing for 2006 which was filed July 30th  
6 at 10:56 in the morning.

7 And there's attached to this claim a  
8 voluminous list of claimants on whose behalf  
9 Fintage is claiming. It does not specifically  
10 say EGEDA. However, I can assure the court that  
11 EGEDA is featured here or its members are  
12 featured because the address of EGEDA, a location  
13 I have been to many times, is Luis -- I'm not  
14 even going to try.

15 The address, the physical address of  
16 EGEDA is listed for each of the claimants that  
17 begin with 12 Penguins. Let's see, that would be  
18 on Bates stamped Page C 02179, about halfway down  
19 when the lines go from very small to a little bit  
20 bigger. All of those claimants are listed  
21 individually by name, and the address given for  
22 them is the physical address of the offices of



1 EGEDA in Madrid.

2 MS. PLOVNICK: And is the same true for  
3 the, so you were looking at the 2006 --

4 THE WITNESS: '06 cable.

5 BY MS. PLOVNICK:

6 Q -- cable. And is the same true for  
7 the 2006 satellite, 2007 cable and 2007  
8 satellite?

9 A Yes. I see Luis Bunuel addresses in  
10 Madrid, throughout the 2007 cable, starting as of  
11 Bates stamped Page C 02447, and then, sorry, that  
12 was 2007 cable.

13 And 2006 satellite, I see EGEDA's  
14 address again starting on Bates stamped Page S  
15 02654. And for 2007 satellite, I see EGEDA's  
16 address again as of Bates stamped Page S 02917.

17 Q So Fintage filed claims on behalf of  
18 EGEDA's individual claimants --

19 A Correct.

20 Q -- for 2006 and 2007 cable and  
21 satellite?

22 A Yes.

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1 Q So what do you conclude from that?

2 A That Fintage was the authorized  
3 claimant for EGEDA; that EGEDA is the  
4 representative of the claimants that were  
5 individually named in each of the 2006 and 2007  
6 filings by Fintage.

7 Q Right. So let's turn to MPAA Exhibit  
8 347.

9 A Okay.

10 Q Have you seen this before?

11 A I have. This is a letter I received  
12 from Screenrights on November 24th, 2014.

13 Q And is this a document that you said  
14 -- you received it. Did you receive it in your  
15 capacity at MPAA?

16 A Yes, it is addressed to me as the SVP  
17 of Rights Management Policy, yes.

18 Q And is this a business record that is  
19 maintained in the regular course of business at  
20 MPAA?

21 A It is.

22 Q And is this a true and correct copy of

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1 the correspondence that you received --

2 JUDGE STRICKLER: Which document are  
3 you looking at?

4 MS. PLOVNICK: MPAA Exhibit 347.

5 JUDGE STRICKLER: Thank you.

6 THE WITNESS: Yes, it is a true and  
7 correct copy.

8 MS. PLOVNICK: So I move to admit MPAA  
9 Exhibit 347.

10 MR. BOYDSTON: Objection, Your Honor.  
11 Same objection that this is not a declaration and  
12 it is hearsay. And I also object that the  
13 attachments that are two constitute an additional  
14 level of hearsay.

15 JUDGE BARRETT: Overruled. 347 is  
16 admitted.

17 (Whereupon, the above-referred to  
18 document was received into evidence as  
19 MPAA Exhibit No. 347.)

20 MR. BOYDSTON: And also, Your Honor,  
21 I object that it was not produced in discovery.

22 JUDGE BARRETT: Likewise overruled.

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1. MS. PLOVNICK: So Ms. Saunders, what  
2 issues, well, I don't want to have you read the  
3 document, but can you please just describe what  
4 is addressed in this letter without really, I  
5 don't want you to read it but just give me --

6 THE WITNESS: Okay. Screenrights  
7 confirms to me that they are claiming within as  
8 an MPAA claimant as an agent not as an owner,  
9 property owner, and they also address what they  
10 say is confusion between works claimed by IPG and  
11 by MPAA on behalf of Screenrights, specifically  
12 of programs called From the Heart, and also the  
13 Outdoorsman that I believe we've discussed or Mr.  
14 Galaz discussed, earlier. They indicate that the  
15 IPG title claim in respect of or on behalf of  
16 Lawrence Welk Syndication --

17 MR. BOYDSTON: Your Honor, objection.  
18 This is getting to the point of reciting the  
19 document.

20 JUDGE BARRETT: Sustained. Ask  
21 another question, Ms. Plovnick.

22 MS. PLOVNICK: Oh, I believe my

1 counsel just asked was 347 admitted, Your Honor?  
2 I just need to clarify.

3 JUDGE BARRETT: Yes.

4 MS. PLOVNICK: All right, thank you.

5 So was there other attachments to MPAA  
6 347 to the letter?

7 THE WITNESS: I'm sorry?

8 BY MS. PLOVNICK:

9 Q Are there attachments to the letter in  
10 MPAA Exhibit 347?

11 A There's a Screenrights membership form  
12 which confirms Screenrights' authority to claim  
13 retransmission royalties on behalf of its  
14 claimants.

15 Q And does this address --

16 A And I believe these forms --

17 Q I'm sorry, let me ask a question. Do  
18 these forms address the titles that are at issue  
19 in the letter?

20 A Yes, they do.

21 Q All right, so let's move on to what's  
22 been premarked as MPAA Exhibit 348. Have you

1       seen this document before?

2           A       I have. This is a letter I received  
3       from CBS Broadcasting dated November 21st, 2014.

4           Q       And is this correspondence that you  
5       received in your official capacity at MPAA?

6           A       Yes.

7           Q       And this is something you received  
8       personally?

9           A       Yes, it is.

10          Q       And is this a document that is  
11       maintained as an MPAA business record --

12          A       It is.

13          Q       -- once it was received by you?

14          A       It is.

15                   MS. PLOVNICK: So I move to admit MPAA  
16       Exhibit 348 into evidence.

17                   MR. BOYDSTON: Your Honor, same  
18       objection.

19                   JUDGE BARRETT: Noted and overruled.  
20       Thank you, Mr. Boydston.

21                   (Whereupon, the above-referred to  
22       document was received into evidence as

1 MPAA Exhibit Number 348.)

2 MS. PLOVNICK: All right, so Ms.  
3 Saunders, now that MPAA Exhibit 348 has been  
4 admitted, can you please, without reading it,  
5 just tell us what did you learn from this letter?

6 THE WITNESS: CBS, Mr. Kryle, informed  
7 me that CBS was claiming two works based on  
8 licensing agreements and he attached redacted  
9 copies of those agreements to his correspondence  
10 to indicate that CBS in fact had received or been  
11 assigned the right to receive retransmission  
12 royalties in the United States.

13 BY MS. PLOVNICK:

14 Q And the attachments to Mr. --

15 A For those works.

16 Q -- to the CBS letter from, I believe  
17 it's from Mr. Kryle, yes, from Sanford Kryle --

18 A Sandy Kryle, yes. Sanford Kryle, I  
19 believe.

20 Q Yes, those cover the titles that are  
21 addressed in his cover letter?

22 A Exactly. They do.

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1 Q All right. Let's move to MPAA Exhibit  
2 349.

3 MR. BOYDSTON: Same objection, Your  
4 Honor.

5 JUDGE BARRETT: Thank you, Mr.  
6 Boydston. Noted, overruled.

7 MS. PLOVNICK: All right, so I move to  
8 admit the Exhibit 349.

9 JUDGE BARRETT: 349's admitted.

10 (Whereupon, the above-referred to  
11 document was received into evidence as  
12 MPAA Exhibit No. 349.)

13 MS. PLOVNICK: Okay. So Ms. Saunders,  
14 well, I mean I guess I'm going to do the, just  
15 350 through 352. These are all going to be the  
16 same.

17 So should I just give you, do you want  
18 me just to go ahead and offer them at, I mean if  
19 we're going to have the same objection it might  
20 be faster for the court. It's up to --

21 JUDGE BARRETT: Mr. Boydston, do you  
22 repeat your three objections with regard to 350



1 through 352?

2 MR. BOYDSTON: Yes, Your Honor, and  
3 let me just clarify them. We object on the  
4 grounds, as long as we're doing it collectively,  
5 we object on the grounds that these are not  
6 declarations and they're hearsay. We also object  
7 to their attachments which are a second level of  
8 hearsay.

9 We object to the extent that some of  
10 these are not rebuttal. I realize they're being  
11 offered as rebuttal. To the extent they were not  
12 rebuttal, then they should have been produced in  
13 discovery.

14 And we object on the grounds that they  
15 were not kept and prepared in the normal course  
16 of business. They were prepared in response to  
17 our rebuttal and therefore they're not  
18 traditional business records.

19 JUDGE BARRETT: And earlier you lost  
20 or rejected on the basis that they had not been  
21 produced in discovery. Is that -

22 MR. BOYDSTON: I think I said that,

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1 but yes.

2 JUDGE BARRETT: Okay. Thank you. Any  
3 objections, Mr. MacLean?

4 MR. MACLEAN: No objection, and I had  
5 actually thought that there was a stipulation of  
6 these core business records but no objection.

7 MS. PLOVNICK: Your Honor, he did  
8 stipulate that they were business records.

9 JUDGE BARRETT: 350 through 352  
10 inclusive are admitted.

11 MR. BOYDSTON: And just for the  
12 record, I only stipulated on the one exhibit. I  
13 am not stipulating further.

14 JUDGE BARRETT: Okay. Thank you.

15 MS. PLOVNICK: Ms. Saunders, just to  
16 - just to make the record clear, all of these  
17 documents that we've been discussing in MPAA  
18 Exhibits - MPAA Exhibits 348 through 352, are all  
19 those documents MPAA business records?

20 MS. SAUNDERS: Yes, they are.

21 MS. PLOVNICK: All right. So may I  
22 have one moment to confer with my client? All

1 right.

2 So going back to MPAA Exhibit 349,  
3 just on a very high level, I do not want you to  
4 read the letter or the documents - what did you  
5 learn from MPAA Exhibit 349?

6 MS. SAUNDERS: That Fox substantiated  
7 its claims to an AFI work involving Barbra  
8 Streisand, as I recall, and attached a license -  
9 we had the redacted license agreement and a quite  
10 extensively highlighted licensing agreement in  
11 that letter in support of its claim.

12 MS. PLOVNICK: And moving to MPAA  
13 Exhibit 350, what did you learn from that  
14 document?

15 MS. SAUNDERS: That our joint  
16 claimant's or agent's compact and IFTA were  
17 confirming their right to claim the work  
18 challenged by IPG, I believe the work is  
19 "Presumed Guilty" and they indicated that - as I  
20 recall that they had agreed to share royalties.

21 They both claimed this work for  
22 particular royalty years and they had made a deal

1 between them as to who would get the royalties.  
2 But they attached support to their letter, as I  
3 recall, of their claims.

4 MS. PLOVNICK: Do they distinguish -  
5 is this another situation where there are two  
6 titles for a similar thing?

7 MS. SAUNDERS: Yes. It appears to be  
8 because they've attached - they describe the work  
9 in the letter that they are claiming and assert  
10 that it is different than the work that IPG is  
11 claiming.

12 MS. PLOVNICK: And let's look to the  
13 last - the last page of that. So is this a  
14 search of the public catalog?

15 MS. SAUNDERS: It is. It is a search  
16 of the public catalog of the copyright office and  
17 -

18 MS. PLOVNICK: What work is it - is it  
19 for?

20 MR. BOYDSTON: I'm sorry. Where are  
21 we?

22 MS. PLOVNICK: The last page of MPAA

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1 Exhibit 350.

2 MS. SAUNDERS: And it deals with the  
3 work or it's a search for the work "Presumed  
4 Guilty," which is a Cosgrove Production.

5 MS. PLOVNICK: All right. And if you  
6 - let's see. Flip back one page. I got one page  
7 ahead of myself. The second to the last page of  
8 MPAA Exhibit 350. Is that - is that also a  
9 copyright insert?

10 MS. SAUNDERS: It is. It is.

11 MS. PLOVNICK: Who was the director of  
12 the Cosgrove work?

13 MS. SAUNDERS: Paul Wendkos,  
14 W-E-N-D-K-O-S.

15 MS. PLOVNICK: And is that - in the  
16 cover letter to this who was the director of the  
17 work claimed by Compact and IFTA?

18 MS. SAUNDERS: Lawrence Simeone,  
19 S-I-M-E-O-N-E.

20 MS. PLOVNICK: So are they different  
21 works?

22 MS. SAUNDERS: They certainly seem to

1 be. There seem to be two different works with  
2 this same title.

3 MS. PLOVNICK: So flipping to the next  
4 MPAA exhibit, MPAA Exhibit 351, so what did you  
5 learn from reviewing MPAA Exhibit 351?

6 MS. SAUNDERS: That the PGA Tour, who  
7 sent - the PGA Tour confirmed their entitlement  
8 to claim and the fact that they had certified to  
9 claim royalties for work involving Bob Hope  
10 "Inside the Ropes."

11 MS. PLOVNICK: And then looking at  
12 MPAA Exhibit 352, that - reading that what did  
13 you learn from reviewing that correspondence?

14 MS. SAUNDERS: This is a letter I  
15 received from Bill Hochberg on November 26th and  
16 he was - he has claimed as an agent and confirmed  
17 certification of his claim as an agent on behalf  
18 of his client, which is TWI with respect to a  
19 work entitled "Healthy Living" and he attached a  
20 licensing agreement from - involving his client  
21 and if I'm not - yes, he also attached Exhibits  
22 or Pages, sorry - copies of extracts for the work

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1 claimed by IPG which is claimed under or on  
2 behalf of the group IWV Media Group and not TWI,  
3 which is Mr. Hochberg's claim and those are -  
4 those seem to be two different works - the IPG  
5 work on behalf of IWV featuring Jane Seymour and  
6 the TWI work claimed by Mr. Hochberg not  
7 featuring Jane Seymour.

8 MS. PLOVNICK: So, Ms. Saunders, so we  
9 just discussed several pieces of correspondence  
10 that you received regarding issues that were  
11 raised in IPG's written rebuttal statement.

12 Did you receive correspondence from  
13 all the claimants IPG challenged?

14 MS. SAUNDERS: No, we did not.

15 MS. PLOVNICK: And do you know why  
16 not?

17 MS. SAUNDERS: Unfortunately, we  
18 didn't have sufficient time to have answers from  
19 all of our claimants and also some of our  
20 claimants responded that the royalty years that  
21 were at issue were too long ago and they had not  
22 maintained sufficient business records to

1 respond.

2 MS. PLOVNICK: But were all of the  
3 titles listed in your written direct testimonies,  
4 which are MPAA Exhibits 309 and 310, certified by  
5 MPAA's claimants?

6 MS. SAUNDERS: The titles listed in  
7 Exhibit B, yes. Each one was certified.

8 MS. PLOVNICK: And were all of those  
9 paper certifications produced to IPG in  
10 discovery?

11 MS. SAUNDERS: Yes, they were.

12 MS. PLOVNICK: All right. Now, if you  
13 could take a look at IPG Exhibit 124. That might  
14 be in the red binder.

15 MS. SAUNDERS: No, it's not in the red  
16 binder.

17 MS. PLOVNICK: Oh, no. You're right.  
18 I think it's a loose document. You put it in the  
19 binder? Oh, it might be at the end then. I  
20 think the clerk might have put it in.

21 MS. SAUNDERS: Yes. Yes. Yes.

22 MS. PLOVNICK: Ms. Saunders, one more



1 question before you go there. Does MPAA create  
2 certifications for litigation?

3 MS. SAUNDERS: No. No, we create them  
4 manually for purposes of distribution of  
5 royalties.

6 MS. PLOVNICK: So you maintained them  
7 as business records in the regular course of  
8 business?

9 MS. SAUNDERS: Yes, of course.

10 MS. PLOVNICK: All right. Thank you.  
11 Now look at IPG Exhibit 124.

12 JUDGE STRICKLER: Can I ask a quick  
13 question? This is to you, counsel, rather than  
14 to the witness, at least in the first instance.

15 You said some of IPG's challenges  
16 were not the subject of rebuttal with additional  
17 documents because of the passage of time is what  
18 the witness said. Can you state now which ones  
19 were not rebutted, just for the record, or are  
20 you not aware?

21 MS. PLOVNICK: Well, we are - we don't  
22 have specific correspondence from the claimant

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1 for some of our entities, but we are rebutting  
2 all of them. I mean, some of their claims are  
3 broad claims.

4 JUDGE STRICKLER: I understand, and  
5 the witness in response to your question said  
6 you're rebutting it and relying on the fact that  
7 there were certifications to that effect.

8 MS. PLOVNICK: Yes.

9 JUDGE STRICKLER: So which of the -  
10 let me say it that way - which of the ones that  
11 were challenged by IPG are you relying solely on  
12 the certifications rather than subsequent  
13 documentation?

14 MS. PLOVNICK: Well, your Honor,  
15 because some of IPG's arguments, and I'm focusing  
16 now - like, they have one large and general  
17 argument aimed at all of MPAA's agents and  
18 claimants are represented through agents. So I  
19 don't know if I could list - I mean, I think this  
20 exhibit list --

21 So we have documents that we've put in  
22 here like representation agreements and things

1 like that and certifications that address those  
2 so it's as - but I just don't understand your  
3 question, your Honor.

4 JUDGE STRICKLER: That's fair. That's  
5 fair. My question was probably too broad.  
6 Yesterday Mr. Galaz spoke about - and he  
7 ballparked it at about 15 or so that he was  
8 saying that he believed that the claimant that  
9 was being represented through MPAA was not in  
10 fact the appropriate claimant and you've now  
11 presented testimony through Ms. Saunders that,  
12 according to her testimony and the documents that  
13 you've introduced into evidence, suggest  
14 otherwise.

15 Out of that group are there some that  
16 you have not attempted to rebut at this point  
17 with documents through Ms. Saunders?

18 MS. PLOVNICK: Your Honor, if I can  
19 answer that. So I believe that there are some  
20 individual titles that we have not produced a  
21 letter addressing.

22 JUDGE STRICKLER: Can you tell me

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1 which ones offhand, if you know?

2 MS. PLOVNICK: I may - I may need to  
3 get back to you on that. But I don't have that  
4 right in front of me or memorized. But I - we  
5 are not - I believe that that would be limited to  
6 particular titles, not to any of our claimants or  
7 our representation of claimants.

8 JUDGE STRICKLER: It would be titles?

9 MS. PLOVNICK: It would be specific  
10 titles.

11 JUDGE STRICKLER: Thank you. I don't  
12 want to - certainly I don't expect - if you don't  
13 have it in front of you know now -

14 MS. PLOVNICK: And it would - it would  
15 be a very short list but - I think but we can  
16 prepare that for you if you would like - the  
17 specific titles.

18 JUDGE STRICKLER: It doesn't even have  
19 to be written. If it can be orally put into the  
20 record and you can even do it during closing  
21 arguments. It would just be - it would be  
22 helpful for the court if I could - at least this

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1 part of the court.

2 MS. PLOVNICK: Of the ones - so it  
3 would be specific titles for which we did not put  
4 in a letter or correspondence addressing them?  
5 Is that - I'm just trying to understand what you  
6 are asking for.

7 JUDGE STRICKLER: Right. Yes.

8 MR. OLANIRAN: May I be heard just  
9 quickly, your Honor? I think I understand. You  
10 want to know that we've addressed some of IPG's  
11 challenges with some of the testimony in that Ms.  
12 Saunders has given.

13 And there's also been - there's a  
14 question eventually responding to the challenge  
15 and then there's a question of whether the  
16 challenge actually rises to the level of the  
17 challenge, by a bare assertion by Mr. Galaz.

18 So in some cases - so it's a mix of  
19 those, some we have definitely addressed - there  
20 are some - there were certainly questions that we  
21 didn't address because we don't believe that they  
22 - because Mr. Galaz's - their assertion amount to

1 - Mr. Galaz's bare assertions that something is  
2 wrong amounts to the fact that something is wrong  
3 to warrant a response.

4 JUDGE STRICKLER: To use your phrase,  
5 it wasn't a trick question. I wasn't trying to -  
6 I wasn't going to trick you with an admission. I  
7 just wanted a sense of what the record shows that  
8 was given specifically in response.

9 MR. OLANIRAN: Absolutely. I  
10 understand.

11 MS. PLOVNICK: So and I - so yeah, so  
12 we're not - if we were to give you a list it  
13 would be a list of titles that we didn't have  
14 specific correspondence on but it would not  
15 necessarily mean that we are conceding them or  
16 that he has met their burden of proof as to them  
17 actually. Is that -

18 JUDGE STRICKLER: So noted. It was  
19 never suggested.

20 MS. PLOVNICK: All right.

21 JUDGE FEDER: I have a question for  
22 the witness. Ms. Saunders, when you reached out

1 to your claimants for confirmation on some of  
2 these things that were challenged, did any of  
3 them come back with correspondence saying you  
4 know what, they were right - just don't have the  
5 rights?

6 MS. SAUNDERS: No. No, your Honor.  
7 No.

8 JUDGE FEDER: Thank you.

9 MS. PLOVNICK: Any other questions?

10 JUDGE STRICKLER: Did anybody get back  
11 to you and say well, we don't know if IPG had the  
12 rights but we know that the MPAA claimant did not  
13 have the rights?

14 MS. SAUNDERS: No. No.

15 JUDGE STRICKLER: You didn't get that  
16 either?

17 MS. SAUNDERS: The closest we came to  
18 any assertion that they did might not have held  
19 the right to the time they claimed were responses  
20 that suggested that the business records - it was  
21 just too old and they could not confirm. But  
22 they had - they did confirm that they certified

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1 those titles to MPAA.

2 JUDGE STRICKLER: When you say they  
3 confirmed that, they confirmed it orally?

4 MS. SAUNDERS: No. Well, I think I  
5 had a conversation with my contact at ABC, I  
6 think. I don't want to get too far out here  
7 because I may be misremembering but I remember -

8 JUDGE . STRICKLER: Well, don't  
9 speculate.

10 MS. SAUNDERS: Oh, sorry. Okay. But  
11 I would have - no, yes, I do orally, yes, by  
12 phone.

13 JUDGE STRICKLER: But you couldn't -  
14 but it would be speculation to try to identify  
15 which ones?

16 MS. SAUNDERS: It would be speculation  
17 to identify which claimant or which titles.

18 MS. PLOVNICK: You're testifying based  
19 on what you remember?

20 MS. SAUNDERS: Exactly, based on my  
21 recollection, yes, and there was only one  
22 instance of recollection - of that kind of

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1 recollection.

2 MS. PLOVNICK: So I was directing your  
3 attention to IPG Exhibit 124. Did you find that?

4 MS. SAUNDERS: Yes. Wait. 124 or  
5 123? Oh, I'm sorry. It's - you know what? The  
6 tabs are attached to the pages and so I thought  
7 120 - yeah, I have it.

8 MS. PLOVNICK: Okay. So do you  
9 remember Mr. Boydston showing these to you  
10 previously in these proceedings?

11 MS. SAUNDERS: I do and it confused me  
12 from the start.

13 MS. PLOVNICK: Yeah, you testified you  
14 did not recognize this document.

15 MS. SAUNDERS: I did testify that I  
16 did not recognize that.

17 MS. PLOVNICK: So now I'm going to  
18 show you a document that's been premarked as MPAA  
19 Exhibit 360 and we have copies - this has already  
20 got the clerk stamp on it but we have copies for  
21 defendant.

22 MS. SAUNDERS: Thank you.

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1 MS. PLOVNICK: And this has been  
2 premarked as MPAA Exhibit 360. Do you recognize  
3 this document?

4 MS. SAUNDERS: Yes, I do. Yes, I do.

5 MS. PLOVNICK: What is it?

6 MS. SAUNDERS: The document you just  
7 handed me is an email exchange from between my  
8 counsel, Greg Olaniran, and Ashley Morgan of  
9 Amity Media TV. Hang on.

10 Let me just make sure I got all of the  
11 - yes. Some exchange between what was initiated  
12 by Ms. Morgan and I actually remember the  
13 initiation of this exchange.

14 MS. PLOVNICK: Well, before you go  
15 into a narrative, let me ask a question here. So  
16 is - now that you've reviewed this document do  
17 you recall the circumstances of this email?

18 MS. SAUNDERS: I do, because Ms.  
19 Morgan's original email caused a huge kerfuffle  
20 inside of the MPAA. Ms. Morgan contacted the  
21 MPAA website. Do you want me to explain that?

22 MS. PLOVNICK: No, no. Yeah. Go

1 ahead.

2 MS. SAUNDERS: Sorry.

3 MS. PLOVNICK: So explain that you  
4 said there was a huge kerfuffle at MPAA. Please  
5 explain.

6 MS. SAUNDERS: Yes. Ms. Morgan  
7 contacted the MPAA website which you can see from  
8 the second page at the bottom on Wednesday the -

9 MS. PLOVNICK: Ms. Saunders, before  
10 you get into this, I want to move the admission  
11 of MPAA Exhibit 360.

12 MR. BOYDSTON: Your Honor, I'm not  
13 sure why this wasn't introduced earlier and  
14 identified. It was clear in our opening with  
15 oral statements that we were making an issue out  
16 of this. I don't know why this -

17 JUDGE BARRETT: What's the legal basis  
18 of your objection?

19 MR. BOYDSTON: It was not identified  
20 in the exhibit list and that's the basis of my  
21 objection.

22 MR. MACLEAN: Your Honor, it's - maybe

1 I'm missing something. It's fairly apparent to  
2 me that MPAA 360 is being offered in response to  
3 IPG 124, which was not on IPG's exhibit list. So  
4 I have no objection.

5 MS. PLOVNICK: Your Honor, that is  
6 exactly the case here.

7 JUDGE BARRETT: 360 is admitted.

8 MS. PLOVNICK: Okay. So now that this  
9 document has been admitted there's something I  
10 think you were beginning to go into the contents  
11 of it so -

12 MS. SAUNDERS: Yes. Yes. Back in  
13 2011, Ms. Morgan contacted MPAA by our website  
14 seeking to report what she called mail fraud  
15 activity based on a letter she received from  
16 Worldwide Subsidy Group and that enquiry made its  
17 way through the MPAA and eventually found its way  
18 to me and I alerted Mr. Olaniran and asked him to  
19 contact Ms. Morgan in response to her July 27th  
20 email.

21 MS. PLOVNICK: Now, Ms. Saunders, you  
22 have in front of you IPG Exhibit 124 and MPAA

1 Exhibit 360. Do those two documents look the  
2 same?

3 MS. SAUNDERS: No. The only thing  
4 that looks the same is - well, there are two  
5 parts. Well, no. I'm sorry.

6 The only part that looks the same is  
7 the obviously - well, it seems very odd because  
8 the message in the middle on the first page of  
9 124 - IPG's 124 has Mr. Olaniran's inquiry or his  
10 response to her - Dear, Ms. Morgan, I'm outside  
11 counsel for MPAA - but that response is on MPAA  
12 Exhibit 360 at the top of Page 2.

13 Interestingly, in IPG's 124 the two of  
14 Mr. Olaniran's email has been deleted somehow.  
15 Mr. Olaniran - so that's the only part that I see  
16 here. The only point of comparison between 124 -  
17 IPG 124 and MPAA 360 that appears to be the same.

18 MS. PLOVNICK: All right. And what  
19 part - what is in the content that's missing from  
20 IPG Exhibit 124?

21 MS. SAUNDERS: I'm sorry. What's in  
22 the content of -

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1 MS. PLOVNICK: What is the content  
2 that is missing from IPG Exhibit 124?

3 MS. SAUNDERS: Well, Exhibit 124 seems  
4 to imply that MPAA solicited Ms. Morgan on a mail  
5 fraud inquiry and MPAA Exhibit 360 makes it clear  
6 that Ms. Morgan came to MPAA in order to report a  
7 concern about mail fraud involving WSG and that  
8 MPAA through Mr. - I'm sorry, Mr. Olaniran  
9 reached out to her and she responded to him on  
10 the cover page - the first page, sorry, then Page  
11 360 thanking him for his email and offering to  
12 discuss it and referencing, as I see here on the  
13 first page, an email that she had received from  
14 Pick & Boydston lawyer Mike Cutler, which  
15 interestingly is included in what must be a  
16 compendium or some sort of compilation of this  
17 email that was provided in IPG's 124.

18 MS. PLOVNICK: Okay. Thank you, Ms.  
19 Saunders. I have no further questions for the  
20 witness at this time.

21 JUDGE BARRETT: Mr. Boydston.

22 MR. BOYDSTON: Before I go forward,

1 I'd just note we normally take a break. I don't  
2 know if we - I just don't want to get going and  
3 then stop.

4 JUDGE BARRETT: I couldn't agree more.  
5 We're going to take a morning recess. Fifteen  
6 minutes is our goal.

7 MR. MACLEAN: Your Honor, never mind.  
8 I'm sorry.

9 (Whereupon, the above-entitled  
10 proceeding recessed at 10:55 a.m. and resumed at  
11 10:59 a.m.)

12 JUDGE BARRETT: Please be seated. Mr.  
13 Boydston?

14 CROSS EXAMINATION

15 MR. BOYDSTON: Thank you, Your Honor.  
16 Ms. Saunders, again I'm Brian Boydston. I  
17 represent Independent Producers Group.

18 You were asked some questions about  
19 IPG's Exhibit 104 which was a number of documents  
20 from AGICOA and also from some other entities.  
21 And you made the comment that these don't  
22 necessarily -- I think your comment, and correct

1 me if I'm wrong, was that those merely represent  
2 monies paid from external sources, obviously not  
3 the Copyright Office.

4 And therefore I think your point was  
5 they wouldn't establish that IPG had any rights  
6 to the copyright royalties in this proceeding.  
7 Was that the point?

8 MS. SAUNDERS: That is yes, more or  
9 less the point.

10 BY MR. BOYDSTON:

11 Q Okay. Understood. Would it not  
12 though, I think it would, would it not show that  
13 IPG has some sort -- had rights to collect  
14 royalties from those foreign distributors or  
15 those foreign entities that paid them?

16 A In -- if those documents could in fact  
17 be linked, and by this I refer I think only to  
18 the AGICOA distribution statement, which did not  
19 indicate or confirm any relationship that I could  
20 see with IPG. If that were -- if there was a  
21 link that could be established, then it would in  
22 fact indicate that IPG had claimed certain titles



1 with AGICOA for which it was claiming monies in  
2 other countries outside the U.S.

3 Q And based upon your position with  
4 AGICOA, are you relatively familiar with AGICOA's  
5 process of making payments like that?

6 A Yes.

7 Q And do they generally accompany them  
8 with some sort of documentation?

9 A Document -- they usually accompany  
10 them with a titles list.

11 Q Okay.

12 A Which is what I think we saw here.

13 Q Okay. Thank you. With regard to the  
14 issues regarding DragonBall Z, in your  
15 communications and in your organization's  
16 communications, did Fox Family or ABC Family ever  
17 provide any agreements that had regarding an  
18 entitlement to collect royalties for DragonBall Z  
19 form 1999 to 2009?

20 A In this proceeding I don't believe  
21 that we asked Fox Family for such documents.

22 Q Okay. And they certainly didn't

1 provide any then, right, if you didn't ask them?

2 A Correct.

3 Q Thank you. With regard to let's see,  
4 you were asked some questions about IPG 22,  
5 Exhibit 22 rather.

6 A Do I need to look at this Mr.  
7 Boydston?

8 Q Yes, please.

9 A Okay, hang on, give me a second then.

10 Q Yes.

11 A Do you -- is that volume one?

12 Q Yes.

13 A Yes. I think it's volume one. Okay.  
14 Yes, yes.

15 Q Now you were asked questions about  
16 that and actually maybe you don't need to look at  
17 it that much, but anyway I'm glad you have it in  
18 front of you just for reference.

19 Now my understanding is that -- are  
20 you aware of any -- I'm not aware of anything.  
21 Are you aware of anything in the record that  
22 establishes that there was some sort of an

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1 assignment of the rights to DragonBall Z to a  
2 distributor?

3 A I'm sorry, are you talking about in  
4 the record in front of me, or the paper in front  
5 of me, in the Exhibit? Or in the entire record  
6 of this proceeding?

7 Q The entire record. I'm not aware of  
8 any.

9 A Actually I am. And that would be the  
10 CRB Decision or the CRB Decision that said that  
11 --

12 Q Well I know what the CRB Decision  
13 says. Are you aware of any contractual  
14 assignment of those rights?

15 A Other than that which may have been  
16 relied upon by the CRB in making that ruling, no.

17 Q Okay. And are you aware of any  
18 particular documents that the CRB relied on in  
19 making that ruling in 1997?

20 A No, I was not a party to that  
21 proceeding.

22 Q Right. Now with regard to -- just to

1 clarify again -- well, never mind, I already  
2 clarified it.

3 With regard to Screenrights and EGEDA,  
4 you said that you're familiar with membership  
5 agreements that they have.

6 A Um-hum.

7 Q Now when you said that membership  
8 agreements, what is that exactly? And I think I  
9 have a good guess, but.

10 A That means that when one becomes  
11 associated as a member of either of those two  
12 CMOs, one would normally fill in a membership  
13 agreement. And Screenrights attached an exemplar  
14 of their membership agreement to the letter they  
15 sent to me which we discussed earlier this  
16 morning.

17 And EGEDA membership agreements I have  
18 seen -- I've seen them in the course of my  
19 professional career.

20 Q Okay. And do those membership  
21 agreements based upon your understanding of them,  
22 I assume that they -- and I am assuming as I'm

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1 asking the question.

2 JUDGE BARRETT: Mr. Boydston, I'm  
3 sorry to interrupt, but so far every question  
4 you've asked since the break, you've said, you  
5 know, I don't know, but do you know.

6 MR. BOYDSTON: I'll stop.

7 JUDGE BARRETT: Thank you. Because  
8 what you know or don't know or what you assume or  
9 don't assume is really not --

10 MR. BOYDSTON: Irrelevant.

11 JUDGE BARRETT: Relevant.

12 MR. BOYDSTON: Correct. What do the  
13 membership agreements provide? And what I mean  
14 by that more specifically is let's say I'm a  
15 producer in Australia and I sign a membership  
16 agreement with Screenrights. Does that mean that  
17 then Screenrights will take claim applications  
18 from me for royalties?

19 MS. PLOVNICK: I'm going to object.  
20 Ms. Saunders is just testifying from her own  
21 knowledge. And unless she knows, I mean, this is  
22 just a hypothetical situation that may be beyond

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1 her personal knowledge. So I object.

2 MR. BOYDSTON: And if it is, so be it.  
3 I'm -- she said she was familiar with the  
4 membership agreements. I'm just trying to ask  
5 what they're --

6 JUDGE BARRETT: Overruled.

7 MS. SAUNDERS: So in the membership  
8 agreement, the language that I recall, and I can  
9 look at it more specifically if you'd like,  
10 refers to the fact that claimants -- that  
11 claimants understand or authorize, and I think  
12 it's more strongly than that. I think it's that  
13 they authorize Screenrights to claim royalties in  
14 Australia and elsewhere in the world, on their  
15 behalf.

16 I do not know how claimants who sign  
17 that agreement then confirm their titles to  
18 Screenrights.

19 BY MR. BOYDSTON:

20 Q Okay. How about EGEDA? Is there a  
21 similar -- when you said membership agreements,  
22 were you also meaning similar membership

1 agreements that EGEDA has?

2 A They're not -- they are -- in this  
3 respect, they are similar. Except that in the  
4 EGEDA membership agreements that I have seen,  
5 there's a specific assignment to EGEDA of those  
6 rights.

7 Moreover, as I said the Spanish law  
8 presumptively designates EGEDA as the  
9 representative of Spanish producers with respect  
10 to cable transmission rights in Spain.

11 Q Understood. Does the MPAA have those  
12 membership agreements for EGEDA and Screenrights?

13 A Other than -- no. No, we do not. The  
14 Screenrights as I said was attached to their  
15 letter. So I have that one. But I do not have  
16 one for EGEDA.

17 Q Okay. And obviously not -- other than  
18 the individuals ones that have been presented,  
19 clearly not all of them have been presented.

20 A Clearly not all of them.

21 Q Do you have a sense as to how many  
22 different individual claimants there are in this

1 proceeding for EGEDA?

2 A For EGEDA I think there are a great  
3 many. I don't -- based on the certification  
4 reports that I've seen. And for Screenrights I  
5 do not know.

6 Q Okay. And with regard to contracts,  
7 again, there's no -- correct me if I'm wrong, but  
8 there's nothing in the record demonstrating a  
9 contract between EGEDA and Fintage, correct?  
10 That you're aware of?

11 A Actually that is not correct. I am  
12 aware of the joint letter that was sent to the  
13 Copyright Office that confirms that Fintage is  
14 the designated representative of EGEDA.

15 And inferring from that letter that  
16 WSG and Fintage were previously both  
17 representative of EGEDA.

18 Q I understand it's a fine point. But  
19 correct me if I'm wrong, I don't see any contract  
20 between EGEDA and Fintage. Are you aware of a  
21 contract between EGEDA and Fintage?

22 MS. PLOVNICK: Objection, Your Honor.



1 I feel that -- well, I'll just say. He is again  
2 saying what he sees or what he knows. He's also  
3 asking Ms. Saunders to characterize the entire  
4 record and she can -- so can he please direct her  
5 to specific documents or to what kind of term or  
6 scope he's going for here.

7 I mean she can't comment on the whole  
8 record.

9 JUDGE BARRETT: I believe the question  
10 was are you aware of?

11 MS. SAUNDERS: I'm sorry, repeat that  
12 question please Mr. Boydston?

13 MR. BOYDSTON: Are you aware of the  
14 existence of a contract between EGEDA and  
15 Fintage?

16 MS. SAUNDERS: Fintage wrote to me to  
17 say that they had a representation agreement with  
18 EGEDA. So in that capacity I'm aware. I have  
19 not seen that contract, no sir.

20 BY MR. BOYDSTON:

21 Q Understood. And we talked about the  
22 membership agreements between EGEDA and its

1 members if you will. And the membership  
2 agreements between Screenrights and its members  
3 if you will.

4 A Um-hum.

5 Q And I understand that MPAA doesn't  
6 have those. Does MPAA have any other contracts  
7 between EGEDA and its individual members?

8 A No. We do not.

9 Q And how about Screenrights?

10 A No, we do not.

11 Q Thank you.

12 A I -- Mr. Boydston, I forgot to mention  
13 one thing with respect to EGEDA and their  
14 agreement with Fintage. I actually have spoken  
15 personally with representatives of EGEDA, the  
16 managing director who has confirmed to me  
17 personally that he has an agreement with Fintage  
18 for the years in question.

19 Q Did you ask him to produce it to you?

20 A No. We were having dinner.

21 Q You could have called to produce at  
22 dinner I would assume. With regard to your

1 efforts that you described to prepare for this  
2 proceeding and in the aftermath of receiving  
3 IPG's rebuttal statement, do you recall  
4 approximately when that was?

5 They were filed in the middle of  
6 October. But do you remember when you were  
7 provided with them?

8 A I'm sorry, when I was provided with  
9 the rebuttal? IPG's rebuttal? I do not recall.  
10 I am so sorry.

11 Q Okay. Does mid-October sound  
12 familiar?

13 A Yes, I mean what are we now? Did I  
14 know that the direct cases were filed in May,  
15 we're now in December, that sounds fair.

16 Q And I understand that the time was  
17 difficult as it was for all of us. You said that  
18 some of the people you contacted said they didn't  
19 have records any longer?

20 A I said one person that I spoke with --

21 Q Oh, I'm sorry.

22 A Did not. Said they could not produce

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1       those records because they were too old.

2               Q       Okay.   Were there other people you  
3       contacted that just didn't respond at all?

4               A       I infer that there were.   We contacted  
5       everyone.   I received letters from only the ones  
6       that -- from those that have been produced today.

7               Q       Okay.   Did you receive any documents  
8       or any letters or anything back from anyone that  
9       you did not produce in this proceeding?

10              A       No, we did not.

11              Q       Now, some of those entities responded  
12       and they addressed some of the programs at issue,  
13       but not all, correct?

14              A       I can't -- I'm so sorry, I can't  
15       square to that.

16              Q       Fair enough.

17              A       I have to take your word for it.

18              Q       CBS did not respond in any way  
19       regarding the Late Show or the Emmy Awards, did  
20       it?

21              A       I do not recall seeing anything  
22       concerning those programs.   I don't believe we

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1 are claiming the Emmy Show in this proceeding.  
2 So I would not have expected to see anything in  
3 regards to that show.

4 Q My question was just that they didn't  
5 provide anything regarding it. Or did they?

6 A And my answer is the same.

7 Q So is it no?

8 A That is a no.

9 Q Okay, thanks. Now with regard to the  
10 show Critter Gitters and the company Litton, did  
11 you ask Litton for confirmation that it had the  
12 rights to Critter Gitters?

13 A I assumed that my counsel did as I  
14 instructed.

15 Q Okay. Are you aware of any kind of  
16 confirmation from Litton to that regard?

17 A I am not.

18 Q With regard to --

19 JUDGE STRICKLER: Excuse me, can I  
20 just interrupt for a second?

21 MR. BOYDSTON: Sure.

22 JUDGE STRICKLER: You said you assume

1 your counsel contacted them as you instructed.  
2 In all of these instances that you're talking  
3 about, did you instruct counsel to make the  
4 contact?

5 MS. SAUNDERS: I did. I instructed my  
6 counsel to confirm. And the letters were sent to  
7 me Your Honor.

8 MR. BOYDSTON: Staying -- oh, sorry.

9 JUDGE STRICKLER: You instructed  
10 counsel to check with the copyright owners?

11 MS. SAUNDERS: That was simply yes,  
12 sir. Yes sir.

13 JUDGE STRICKLER: And did you direct  
14 -- how do you know whether or not counsel  
15 received the responses as opposed to you not --  
16 you didn't receive the response?

17 MS. SAUNDERS: Well, that's a good  
18 point. And I don't know if counsel. I assume  
19 that my counsel, as my counsel would have shared  
20 those responses with me had he received them. So  
21 I -- but I obviously was not in his office.

22 The reason that I asked my counsel to

1 respond Your Honor, is that I travel extensively  
2 and it would have taken far too much time for me  
3 to individually reach out to each claimant. I'm  
4 sure that would have been my counsel's  
5 preference.

6 JUDGE STRICKLER: Okay. So your  
7 knowledge of what was in fact received --

8 MS. SAUNDERS: Yes.

9 JUDGE STRICKLER: Comes from whether  
10 counsel's providing the -- providing the  
11 responsive documents to you or the responsive  
12 documents came directly to you?

13 MS. SAUNDERS: The responsive  
14 documents were all sent to me.

15 JUDGE STRICKLER: As far as you know?

16 MS. SAUNDERS: Sir yes. The  
17 responsive documents that I have in my possession  
18 were sent to me and they are in this record.

19 JUDGE STRICKLER: Thank you.

20 BY MR. BOYDSTON:

21 Q Back to CBS. CBS did not give any  
22 confirmation that it owned the rights to

1 Singsation either, did it?

2 A Not to me.

3 Q Do you know if they gave it anybody  
4 else?

5 A I do not know.

6 Q With regard to Transworld  
7 Incorporated. I believe that they provided a  
8 confirmation that they did -- they addressed the  
9 issue with regarding to Healthy Living Mysteries  
10 of the Mind, correct.

11 A Yes. Not the Jane Seymour work, but  
12 the other work.

13 Q And I -- by the Jane Seymour work, why  
14 do you say it that way? I think I know what  
15 you're referring to, but what I think is not  
16 important of course.

17 TWI did not respond with regard to  
18 Healthy Living Parenting Beyond, did it?

19 A I would have to look at their  
20 correspondence. I'm so sorry Mr. Boydston, I  
21 don't recall.

22 Q Well, let's do that real quick.

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1           A       Okay.

2                   MS. PLOVNICK: I have an objection.  
3       I think his mischaracterizing the Millen  
4       Affidavit. I don't recall Healthy Living  
5       Parenting and Beyond even in that declaration.  
6       And I --

7                   MR. BOYDSTON: Your Honor, I think  
8       that's argument. And they can make that  
9       argument.

10                  MS. PLOVNICK: But I mean, so anyway,  
11       I think that this is Irrelevant to the extent it  
12       said title Healthy Living Parenting and Beyond.  
13       It's not the title that's been addressed here.

14                  MR. BOYDSTON: And I disagree and I  
15       think that's an argument not an objection.

16                  JUDGE BARRETT: Overruled. We'll let  
17       Mr. Boydston finish his case.

18                  MR. BOYDSTON: Thank you, Your Honor.  
19                       Please take a look at Exhibit 352.  
20       That's the --

21                  MS. SAUNDERS: I had it open right  
22       here.

1 BY MR. BOYDSTON:

2 Q Oh, great.

3 A Okay.

4 Q Now, looking at that letter, I see  
5 they addressed Healthy Living Mysteries of the  
6 Mind on the first page of the letter.

7 A Um-hum.

8 Q They mentioned it a couple of times.  
9 And I don't see -- and then I look at the third  
10 page, which is another letter dated October 3,  
11 2003, which addresses the same show, Healthy  
12 Living Mysteries of the Mind.

13 Looking through the rest of this  
14 Exhibit, I didn't see any other Healthy Living  
15 titles referenced. And so, looking at that, I  
16 renew my question, I don't believe they addressed  
17 the issues about Healthy Living Parenting and  
18 Beyond. Would you agree with me?

19 A So my understanding Mr. Boydston is  
20 now you actually want me to read this letter into  
21 the record or you do not?

22 Q No, no, no, I don't want you to read

1 the letter into the record.

2 A Okay.

3 Q Just take a look at it. My question  
4 -- my original question was did they address  
5 Healthy Living Beyond --

6 A Okay.

7 Q Excuse me, I almost said Beyond  
8 Parenting. That would be a curious title.

9 A All right, something about Parenting.

10 Q I was asking about if they addressed  
11 Healthy Living Parenting Beyond.

12 A I do not see any reference to that  
13 work.

14 Q Thank you. And at no --

15 A And I assume that's an episode? Is  
16 that fair?

17 Q Well, I'm not supposed to answer the  
18 questions.

19 A Oh, okay. I'm sorry. Of course. Of  
20 course.

21 Q I ask them and you do. With regard to  
22 the Healthy Living series of Jane Seymour, you

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1 already said that that's not being claimed and  
2 that certainly wasn't addressed in this letter or  
3 these materials, correct?

4 A The Jane Seymour work was referenced  
5 in the materials only in regard to the fact that  
6 Mr. Hochberg's client TWI is not claiming that  
7 Jane Seymour work.

8 Q Understood. That was consistent with  
9 your prior answer, yes.

10 A Okay. Yes.

11 Q Are you aware that those are -- that's  
12 owned by Five Star?

13 A I'm not aware of that.

14 Q Okay. Are you familiar with the  
15 entity IWV and it's ownership of Healthy Living  
16 Parenting and Beyond?

17 A Only that IWV is the claimant  
18 indicated in the Exhibit 3 of this -- of Mr.  
19 Hochberg's letter of November 26. And the  
20 reference under Healthy Living, the description  
21 of the show with Jane Seymour indicates IWV Media  
22 Group as it does on the following page.

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1 Q Okay. I'm going to ask you to -- I'm  
2 sorry, I'm just checking my notes so I don't ask  
3 a question twice. It's always a good idea.

4 Please take a look at Exhibit 345.  
5 And these are the certifications, the first one  
6 is calendar year 2003, Satellite.

7 A Um-hum.

8 Q We've talked about these at length.

9 A Um-hum.

10 Q And moving to the list of programs  
11 which appear at the second pages and following.

12 A Right.

13 Q And just to frame it, you testified  
14 and it's very clear now. These lists were  
15 generated by many of these third party vendors, I  
16 don't who they are. And then provided by to the  
17 MPAA.

18 A Um-hum.

19 Q And then the third party vendor's  
20 information was passed on to the MPAA.

21 A Um-hum. Yes.

22 Q Now, with regard to these lists here

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1 in 345 and the other ones as well, my  
2 understanding from your testimony is that those  
3 were used to create Exhibits A and B to your  
4 testimony.

5 A Correct.

6 Q And I'm asking again because there's  
7 now a lot of questions. As you know, there was  
8 kind of a blizzard of questions about that. And  
9 I got confused.

10 So that's all I just wanted to  
11 confirm. Now -- and I think you said correct.

12 A I -- what's I'm saying Mr. Boydston is  
13 --

14 MR. MacLEAN: Objection.

15 MS. SAUNDERS: Oh, go ahead.

16 MR. MacLEAN: Your Honor, I don't see  
17 how this witness can testify where it was correct  
18 that Mr. Boydston was confused.

19 MR. BOYDSTON: Humor appreciated.

20 JUDGE BARRETT: Noted.

21 MS. PLOVNICK: Your Honor, I also just  
22 object that we're retreading ground that we've

1 already covered extensively. He's crossed her  
2 now, I think this is the third time on this  
3 topic.

4 MR. BOYDSTON: I just -- as I said,  
5 there were a lot of questions about this. I'm  
6 just quickly confirming it and I'm going to move  
7 on.

8 She said correct. But now she wanted  
9 to say something else.

10 JUDGE BARRETT: Go ahead.

11 MS. SAUNDERS: I'm sorry.

12 JUDGE BARRETT: The objection is  
13 overruled. Let's just get this done.

14 MS. SAUNDERS: So, Mr. Boydston. As  
15 I have said many times now, Exhibit B was  
16 prepared from MPAA certification reports very  
17 full stuff. Certification reports were returned  
18 to the MPAA. That is the basis for Exhibit B.  
19 Those titles are what is in Exhibit B.

20 MR. BOYDSTON: Okay. As a result, to  
21 the extent that there were programs in the list  
22 in Exhibit 45 that were crossed out, is it then

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1 true that those that are crossed out would not  
2 appear in Appendix B?

3 MS. SAUNDERS: If those titles had  
4 been crossed out, yes it -- you're correct, they  
5 would not have been -- those titles, the marked  
6 out titles would not be in Exhibit B.

7 MR. BOYDSTON: Okay. Thank you.

8 JUDGE STRICKLER: And when you said  
9 Exhibit B, you mean Appendix B, just so the  
10 record is clear.

11 MS. SAUNDERS: I'm sorry, yes. I'm  
12 sorry Your Honor. Exhibit B to both my --

13 JUDGE STRICKLER: No, Appendix.

14 MS. SAUNDERS: Cable and Satellite  
15 direct testimonies.

16 JUDGE STRICKLER: Appendix A and  
17 Appendix B.

18 MS. SAUNDERS: Appendix A and Appendix  
19 B. Yes. Now I am also getting confused.

20 BY MR. BOYDSTON:

21 Q And you said in response to my  
22 question you said Appendix B was prepared from

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1       these lists --

2               A       The titles.

3               Q       That excluded Appendix A.     And I  
4       assume that was intentional?

5               A       No, it was not intentional. I thought  
6       we were focusing on the titles.

7               Q       Okay.   Thank you.   With regard to  
8       Appendix A which was the owners, was that list in  
9       your -- was Appendix A to your testimony created  
10      from the -- from these lists attached to Exhibit  
11      345, et cetera?

12              A       The information in Exhibit A was  
13      compiled based on the information on the cover  
14      page, the certificate of entitle.

15              Q       Understood.

16                    MS. PLOVNICK: Your Honor, the witness  
17      is -- he hasn't shown her these Exhibits.  
18      They're admitted MPAA Exhibits 309 and 310 and  
19      the Appendices are attached. And I think he's  
20      confusing her as to which one is A and which one  
21      is B.

22                    So I mean I can redirect, however, I

1 just -- you know, if they're here, she can look  
2 at them and that might make all of us you know,  
3 be able to see and be clear. So I --

4 MR. BOYDSTON: Ma'am, do you  
5 understand what I'm talking about? Are you  
6 clear? Or would it help to look at those?

7 MS. SAUNDERS: So let me try to sum  
8 this up. Certification -- the certifi -- the  
9 certification of entitlement, which indicates the  
10 claimants' names, those names are in Exhibits A  
11 to each of my cable and my Satellite direct  
12 testimony, which I think are 309 and 310 as filed  
13 in this proceeding.

14 BY MR. BOYDSTON:

15 Q Understood.

16 A Okay.

17 Q Okay and I think we already clarified  
18 B, so I won't belabor that.

19 A Okay.

20 Q Now, our review of the certifications  
21 indicated that the satellite certifications ran  
22 to about 5,800 pages. And that includes both the

1 certification face page and the list following.  
2 That was about 5,800 pages.

3 And the cable certifications were  
4 about 3,400 pages. So that's a lot of pages  
5 obviously. It's over 9,000 pages.

6 So were all those pages gone through  
7 manually and the information derived from it and  
8 then typed into this list that became Appendix A  
9 and a list that became Appendix B? Was that how  
10 it was done?

11 A I do not know. My counsel prepared  
12 those exhibits Mr. Boydston. And remember, we're  
13 dealing with an enormous number of royalty years.  
14 So it was unfortunate but not surprising that  
15 there would be that many pages.

16 Q Fair to understand that it would be  
17 that many pages. Did you ever have any  
18 discussions with counsel in which they indicated  
19 to you how it was that they prepared that?

20 A No.

21 MS. PLOVNICK: Objection. It's  
22 privileged.

1 MR. BOYDSTON: Sorry, Your Honor,  
2 withdrawn.

3 And those Appendices were Appendices  
4 to your testimony that was prepared I think in  
5 the spring of this year, correct?

6 MS. SAUNDERS: The cases were filed in  
7 May.

8 BY MR. BOYDSTON:

9 Q Yes.

10 A So it would have been prepared before  
11 the direct cases were filed is my --

12 Q Okay. And obviously before that -- it  
13 was before that that Mr. Whitt gave the hard  
14 drive to you. I think you said it was 2010, is  
15 that correct?

16 A Ms. Kessler retired in 2010. I have  
17 said that. I do not recall any longer if I have  
18 -- I don't believe I've said when Mr. Whitt gave  
19 us that hard drive. And I don't believe I  
20 recall.

21 Q Okay.

22 A Whenever we terminated Mr. Whitt's

1 services or we -- you know, he retired, --

2 Q Right.

3 A We would have obtained the hard drive  
4 at that time.

5 Q Yes. And it was at least a couple of  
6 years ago, right?

7 A More than a couple.

8 Thank you. With regard to  
9 Fintage, did Fintage -- I don't believe Fintage  
10 ever addressed -- well, strike that.

11 Do you have an understanding as to  
12 whether or not Fintage ever addressed the issue  
13 of whether it had a current contract for this  
14 time period we're at here, '99 to 2009, with TV  
15 Azteca or Televisa?

16 A If I could refer to Fintage's letter,  
17 I think that --

18 Q Oh, yes, please have --

19 A That has --

20 Q There are two things about Fintage,  
21 there's a -- yes, let's look at their letter.  
22 There's their letter and their certification.

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1           A       Here it is. Okay.

2           Q       Certainly let's look at their letter.  
3       Oh, no I -- yes, let's look at their letter which  
4       is 346. Conveniently the next number.

5           A       Um-hum.

6           Q       What I know I not important. I will  
7       tell you I didn't see one, but I'm often  
8       incorrect. Just ask my wife.

9           A       I'm sorry, your question is?

10          Q       Whether or not Fintage ever addressed  
11       the issue as to whether or not it had a current  
12       -- a right to collect copyright royalties for TV  
13       Azteca and Televisa for the time period in  
14       question here in these proceedings?

15          A       Well in the Fintage letter of November  
16       21, 2014, Fintage tells me that they have  
17       attached a representation agreement dated January  
18       1, 2003 with Televisa and a representation  
19       agreement dated March 2004 between TV Azteca.

20                 I do not recall whether those  
21       agreements -- but I'm happy to look at them to  
22       see if they indicate the period of time of the

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1 claim.

2 Q Well, I appreciate that and let me  
3 just ask a different question.

4 A Okay.

5 Q Did they ever address the fact that  
6 their representation -- that they terminated  
7 their representation at one time with Fintage?

8 A No. They do not. I'm not aware of  
9 that.

10 Q Okay. With regard -- let's look at  
11 the next Exhibit, which is 347 regarding  
12 Screenrights. And now I believe they make a  
13 claim for Buck McNeely, The Outdoorsman in 2009.  
14 Is that your understanding?

15 Actually, well, I think I may be  
16 confusing here and I don't want to be. The  
17 second page of their letter references The  
18 Outdoorsman with Buck McNeely, right?

19 A Yes it does.

20 Q Now in the materials following this,  
21 there aren't any of these materials following  
22 that second page. The deal with the Buck McNeely

1 program, are there?

2 A Well, let me just have a look. I  
3 believe these are simply agreements with the  
4 relevant entities that are their members.

5 And in the letter they indicate that  
6 they are claiming the series The Outdoorsman on  
7 behalf of one of those members whose membership  
8 form is attached to their letter. Which is the  
9 ATA Trading Corporation.

10 Q Okay. And I see the ATA Trading  
11 Corporation document. But I don't see anything  
12 under it that references The Outdoorsman.

13 A No, there's no entitles attached to  
14 this at all.

15 Q Okay. So I'll leave that as it is.  
16 It is what it is.

17 Let's look at Exhibit 348 regarding  
18 CBS Broadcasting.

19 A Um-hum.

20 Q Now we've covered this already, some  
21 of this already I believe. Now there is some  
22 information attached to this about regarding



1 Martha Stewart Living, correct?

2 A Yes, there is.

3 Q Is there any reason why there's  
4 nothing from Martha Stewart Living itself?

5 A Hang on. Well there is a letter  
6 attached to Martha Stewart Living from Eyemark  
7 Entertainment.

8 Q Why I -- there's nothing here from  
9 Martha Stewart Living itself that I see. And I  
10 don't think -- and my question, is there a reason  
11 why that is? But it certainly is some reason  
12 why?

13 A I don't know. I believe -- I don't  
14 know. I don't know. It may have seemed  
15 unnecessary given the license agreement.

16 Q Okay. But why --

17 A CBS Broadcasting is not normally an  
18 entity that one would consider to make false  
19 assumptions about their rights.

20 MR. BOYDSTON: Move to strike the last  
21 comment. It's beyond the scope and it's an  
22 opinion.

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1 But let me ask you this. The  
2 agreement between -- and there is no agreement in  
3 the record or attached to this Exhibit between  
4 CBS and Martha Stewart, correct?

5 MS. SAUNDERS: There is no -- there is  
6 no agreement between --

7 MS. PLOVNICK: Objection, this  
8 misconstrues the evidence.

9 MR. BOYDSTON: Well I think it  
10 correctly states the state we are in.

11 JUDGE BARRETT: Overruled.

12 MS. SAUNDERS: Eyemark -- Eyemark has  
13 -- an agreement with Eyemark is attached.  
14 Eyemark being the entity that -- this is a  
15 complicated one.

16 So, Martha Stewart Living is otherwise  
17 known as Time TV Ventures Productions. And there  
18 is an agreement between Eyemark Entertainment and  
19 Martha -- sorry, MSL, Martha Stewart  
20 Living/Timemark TV Ventures.

21 So I see -- believe you can conclude  
22 that this is -- there is an agreement with Martha

1 Stewart Living.

2 BY MR. BOYDSTON:

3 Q You're right. And I think that goes  
4 from 2001 forward, correct?

5 A Excuse me, let's see what does that  
6 say? Well CBS tells me that they have rights to  
7 claim as of 2000. The Eyemark letter to Martha  
8 Stewart Living is dated 1986 and it was signed  
9 1996.

10 A distribution agreement with Eyemark  
11 and Martha Stewart Living/Time TV is dated 1995.  
12 So it proceeds 2000.

13 Oh, and Martha Stewart herself signed  
14 one of these documents. How -- on October 25,  
15 1996.

16 Q Yes. I see that as well. Let's move  
17 onto Exhibit 349 regarding 20th Century Fox and  
18 specifically the letter addresses AFI Life  
19 Achievement Award, a Tribute to Barbara  
20 Streisand.

21 Now is it your understanding that AFI  
22 is the underlying owner of this entity -- of this

1 property rather?

2 A Well, let me just see Mr. Boydston,  
3 hang on a second. I read all these at one time.  
4 I apologize my recollection does not stretch so  
5 that I can recall these things perfectly.

6 JUDGE FEDER: Which Exhibit are we on  
7 now?

8 MR. BOYDSTON: We are on 349.

9 JUDGE FEDER: Thank you.

10 MS. SAUNDERS: So, as I understand it,  
11 the producer is AFI -- the producer is AFI of  
12 this -- so AFI is the producer of this work. I  
13 would say yes, it appears that they are the  
14 owner.

15 BY MR. BOYDSTON:

16 Q And therefore they should be listed as  
17 the owner on appropriate documents, correct?

18 A Well, no. They are the producer who  
19 has assigned the rights. So the fact that they  
20 own the show as I previously stated, does not  
21 indicate whether or not they have the right to  
22 receive cable or satellite retransmission

1 royalties.

2 Q I realize that, but they are the owner  
3 and if something demands that the owner be  
4 listed, then they would be the ones to be  
5 listed, would they not?

6 A If something demanded, the owner of  
7 what Mr. Boydston? The show --

8 Q The owner of the show.

9 A As opposed to the retransmission  
10 royalties?

11 Q Yes. If there's -- yes, correct.

12 A I did not know that show ownership was  
13 the subject of these proceedings. I thought it  
14 was retransmission royalties?

15 Q My question is if the owner of the  
16 show is supposed to be indicated, then should not  
17 AFI be indicated with regard to this particular  
18 show?

19 MS. PLOVNICK: Objection. What is  
20 supposed to be, clarify please the question.

21 JUDGE BARRETT: Objection sustained.  
22 We're not dealing with ownership here Mr.

1 Boydston.

2 MR. BOYDSTON: Okay. There's no  
3 dispute that AFI is the owner of this particular  
4 property a Tribute to Barbara Streisand, correct?

5 MS. SAUNDERS: There's not dispute  
6 that AFI is the producer.

7 MS. PLOVNICK: Objection. We're not  
8 dealing with -- the Judge just ruled we're not  
9 dealing with ownership and he's now asked her to  
10 identify the owner.

11 JUDGE BARRETT: We're done with the  
12 topic. You may be seated Ms. Plovnick.

13 MR. BOYDSTON: Thank you, Your Honor.  
14 Let's look at Exhibit 52.

15 MS. SAUNDERS: Which -- who's Exhibit  
16 52? Your Exhibit 52?

17 BY MR. BOYDSTON:

18 Q I'm sorry, 352. I'm sorry.

19 A Oh, I see. Okay.

20 Q Actually before we do that -- well,  
21 let's see here. Let's go to 345 briefly before  
22 we go to 352.

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1                   Now and my question is to you will be  
2 as follows and it may require you to look through  
3 345. With regard to --

4                   JUDGE BARRETT:     345 is marked as  
5 restricted.

6                   MR. BOYDSTON:    Oh, I'm sorry.

7                   JUDGE BARRETT:   Those of you in the  
8 courtroom who have not signed the confidentiality  
9 agreement, please wait out in the anteroom, thank  
10 you.

11                   MR. BOYDSTON:   Now I believe you  
12 testified that you attempted to address  
13 everything that's been brought up with regard to  
14 these various certifications in terms of  
15 demonstrating the rights to collect the materials  
16 that are represented in these certifications,  
17 correct?

18                   MS. PLOVNICK:     Objection.     That  
19 mischaracterizes Ms. Saunders' testimony.

20                   MR. BOYDSTON:   Let me ask it in a  
21 different way.

22                   MS. PLOVNICK:   Thank you.

1 MR. BOYDSTON: Now in 345, there is  
2 reference to Buck McNeely, The Outdoorsman.

3 MS. SAUNDERS: I'm sorry, 345 is Phil  
4 Hochberg's Transworld International. Do you mean  
5 347?

6 MR. BOYDSTON: Yes, I do, I apologize.

7 MS. SAUNDERS: Okay.

8 JUDGE STRICKLER: And we're not on  
9 345?

10 MR. BOYDSTON: No, I'm sorry. Give me  
11 just a second. I don't think it's 347 either.  
12 I'm sorry. Let's look at 352.

13 MS. SAUNDERS: Is this one restricted?

14 MR. BOYDSTON: No, it's not. We can  
15 invite the gallery back in.

16 MS. SAUNDERS: Okay.

17 MR. BOYDSTON: While everyone's filing  
18 back in, I'd like to ask that this be marked as  
19 Exhibit 127.

20 (Whereupon, the above-referred to  
21 document was marked as IPG Exhibit No.  
22 127 for identification.)



1 MR. BOYDSTON: Take a look at this.  
2 I'll represent to you that this is an excerpt if  
3 you will of the MPAA production in response to  
4 the Judge's Order of July 30, 2014.

5 MS. SAUNDERS: Um-hum.

6 MR. BOYDSTON: Judge Strickler, this  
7 would be sort of a miniature version in the sense  
8 of what we discussed, or what you had mentioned  
9 yesterday. It is not what you'd said, but it's  
10 similar. It's not as complete.

11 JUDGE STRICKLER: Okay.

12 BY MR. BOYDSTON:

13 Q And I'd ask you to look at the second  
14 page, which is numbered 64 and it includes at the  
15 bottom several entries for Transworld  
16 International. And I'm concerned with the last  
17 two.

18 And then next half dozen or so  
19 following on the following page which reference  
20 Healthy Living Parenting Beyond, 10, 11, 7 and 8,  
21 9 and then Healthy Living Today's Health.

22 A Um-hum.

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1           Q       Now, my understanding is based upon it  
2 being in this document, that these are programs  
3 for which the MPAA is making claim, correct?

4           MR. MacLEAN: Objection. Your Honor,  
5 is IPG 127 being offered into evidence?

6           MR. BOYDSTON: Right now it's just for  
7 reference to refresh her recollection as to what  
8 was in the large document.

9           JUDGE BARRETT: If it's just to  
10 refresh her recollection --

11          MS. PLOVNICK: Well, I have an  
12 objection also too. This does not identify  
13 particular royalty year at issue. And I mean,  
14 the information that we produced that I believe  
15 this was drawn from, would have been linked to  
16 particular royalty years.

17               So you could easily connect them with  
18 the certification that -- well you know, there  
19 are different titles for each royalty year.

20          JUDGE BARRETT: Ms. Plovnick, it  
21 hasn't been offered yet.

22          MS. PLOVNICK: All right.

1 MR. BOYDSTON: For clarification, it  
2 is identified. And it is -- and there's a hand  
3 -- it's handwritten, but it is identified in the  
4 lower left hand corner. The pages I was asking  
5 about concern the royalty year 2004.

6 JUDGE STRICKLER: Whose handwriting is  
7 2004?

8 MR. BOYDSTON: That is Mr. Galaz's  
9 handwriting. And then if you'd -- at the third  
10 page, you'll see the handwritten numbers 2005.  
11 And that represents the 2005 broadcast year.

12 So I believe my question before the  
13 objections was based on this -- these pages that  
14 I reference and the references to Transworld  
15 International and Healthy Living Today, Today's  
16 Health and Healthy Living Parenting and Beyond,  
17 is it true that this indicates that the MPAA is  
18 making a claim for those programs in 2004?

19 MR. MacLEAN: Objection Your Honor.  
20 I thought this Exhibit was being used to refresh  
21 recollection?

22 MR. BOYDSTON: It still is.

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1 JUDGE BARRETT: Well then --

2 MR. BOYDSTON: I was just stating my  
3 question.

4 JUDGE BARRETT: If you claim it had,  
5 it would first help to establish that she has  
6 knowledge. Then show her this, ask her if this  
7 refreshes her a bit. That she has knowledge that  
8 she cannot recall. Then find out if this helps  
9 to refresh her recollection.

10 But not ask if based upon this  
11 document she would testify to something.

12 MR. BOYDSTON: Understood your Honor.  
13 I apologize for the shortcut. We've talked about  
14 this a lot. And that's why I made an assumption  
15 I shouldn't have.

16 MS. PLOVNICK: Your Honor, I think  
17 MPAA Exhibit 345 would certainly help Ms.  
18 Saunders refresh her recollection if they turn to  
19 the certification to cover the years.

20 MR. BOYDSTON: Well, I'm asking  
21 something different if I may?

22 JUDGE BARRETT: You may. Just --

1 MR. BOYDSTON: So let me do what you  
2 suggested Your Honor and make the foundation.

3 JUDGE BARRETT: Well, I didn't suggest  
4 that I think it's going to be into evidence.

5 MR. BOYDSTON: I'm sorry. I'm sorry,  
6 Your Honor.

7 Ms. Saunders, we have -- we've been --  
8 the questions and answers have been asked about  
9 the spreadsheet that was provided by the MPAA in  
10 response to the Judge's Order of July 30, 2014.  
11 Do you recall that?

12 MS. SAUNDERS: I do.

13 BY MR. BOYDSTON:

14 Q And do you recall the big spreadsheet  
15 that was produced that you said at great cost and  
16 great hassle, was another word.

17 A Yes. Well, not for me, but yes.

18 Q In response thereto. Do you recall  
19 that spreadsheet?

20 A Yes, yes.

21 Q Yes or not?

22 A Yes, I do.

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1 Q Okay. And do you have something there  
2 that you would, yes?

3 A I'm sorry?

4 Q You have familiarity with it, yes?

5 A I'm sorry, with this that you just  
6 handed me, Exhibit?

7 Q No. Do you have familiarity with the  
8 big spreadsheet that was prepared in response to  
9 the Judge's Order?

10 A Yes, yes, yes. Okay, I'm sorry.

11 Q Okay. And do you recall that that big  
12 spreadsheet included claims for Transworld  
13 International, Inc., for Healthy Living Parenting  
14 and Beyond and Healthy Living Today's Health?

15 A Okay.

16 Q Okay, so the question is did you  
17 recall that?

18 A Not off of the top of my head I don't.  
19 But I believe that we could compare with the  
20 attachments or the Appendices to my testimony,  
21 respectively A and B and confirm whether and for  
22 what years this claimant and those shows are

1 claimed by MPAA.

2 Q I appreciate that. I'm just asking  
3 now about the spreadsheet. Do you recall that  
4 the spreadsheet includes those claims?

5 A I do not. I recall the spreadsheet  
6 was prepared and I have seen the first page which  
7 is attached to one of these many Exhibits. But I  
8 do not recall that.

9 MR. BOYDSTON: Very reasonable. It's  
10 a big document. Now, Your Honor, I'd like to  
11 refer the witness to Exhibit 127 to attempt to  
12 refresh her recollection.

13 JUDGE STRICKLER: You mean IPG 127?

14 MR. BOYDSTON: Yes. IPG 127. It's  
15 not been admitted yet. No, this is what I just  
16 handed you. This is the -- Ms. Saunders?

17 MS. SAUNDERS: Yes?

18 MR. BOYDSTON: This is the --

19 MS. SAUNDERS: Oh, I'm sorry. I'm  
20 sorry. Okay. Yes, sorry. Got it, okay.

21 MS. PLOVNICK: I thought we were just  
22 looking at that and now he's refreshing her

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1 recollection. I mean, I'm really -- I'm totally  
2 confused as to what's being refreshed?

3 MR. BOYDSTON: I'm trying to refresh  
4 --

5 JUDGE BARRETT: Her recollection of  
6 the contents of the spreadsheet Ms. Plovnick.

7 BY MR. BOYDSTON:

8 Q Now, looking down here at the second  
9 page of this Exhibit, which is marked as 64 and  
10 the third page marked as 65, does that refresh  
11 your recollection that the spreadsheet indicated  
12 these years making a claim for Transworld  
13 International, Inc. on programs Healthy Living  
14 Parenting, several of them, and Healthy Living  
15 Today's Health, several of them?

16 A It does not Mr. Boydston, because  
17 first of all the certification you've asked me to  
18 look at under 345 refers only to cable and  
19 satellite royalties for year 2003. The  
20 spreadsheet you've handed me, Exhibit 127 refers  
21 to royalties starting in 2004, '05 through '09.

22 What is relevant, and I thought we had

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1 established this in chapter and verse yesterday,  
2 is -- are the shows that are attached to my  
3 testimony in Exhibits B, those are the titles in  
4 -- designated by royalty year, for which we are  
5 asserting a claim in this proceeding.

6 This Excel spreadsheet, Exhibit 127  
7 does not -- is not the representation to my  
8 knowledge, I cannot tell you whether this is a  
9 compendium of every title for every year that we  
10 have claimed. I can tell you that Exhibit B is.

11 JUDGE STRICKLER: I just want to make  
12 sure I'm following you Ms. Saunders. You said  
13 Exhibit 345 does not refer to calendar year 2004.  
14 But it seems to me that it covers 2003 and 2004  
15 and perhaps other years as well.

16 MS. SAUNDERS: Well, I apologize Your  
17 Honor, it does. I did not see the other  
18 certifications of entitlement. Yes, there's one  
19 for '03, there's one for '04. And it does have  
20 on these certification reports, Today's Health.

21 And I'm a little -- maybe I'm using  
22 the thread about what we're talking about.

1 JUDGE STRICKLER: Maybe he needs to --  
2 now that you acknowledge that those documents are  
3 there, maybe he can ask you the question again.

4 MS. SAUNDERS: Yes. Yes.

5 JUDGE STRICKLER: Mr. Boydston do you  
6 want to ask her that again?

7 MS. SAUNDERS: Now let me see if my --

8 MR. BOYDSTON: Yes, thank you, Your  
9 Honor.

10 My question again is very specific Ms.  
11 Saunders.

12 MS. SAUNDERS: Um-hum.

13 BY MR. BOYDSTON:

14 Q Right now I'm really not asking you  
15 about 345, okay.

16 A Okay.

17 Q I'm asking you about the spreadsheet.  
18 And if we had the spreadsheet here it would be  
19 like this in its complete format, right?

20 A Um-hum.

21 Q And that would be kind of hard. So  
22 what I've provided here in Exhibit 127 is just

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1 the relevant pages I want to ask you about.

2 And my original question was in that  
3 big enormous thing, did it not include Transworld  
4 International claims for Healthy Living Parenting  
5 and Beyond and Today's Health. And you said I  
6 can't remember. Which is very reasonable in a  
7 big document like that.

8 So now I have provided you with just  
9 the relevant pages --

10 A You've showed me.

11 Q Now I'm just providing you the  
12 relevant pages --

13 A Yes, okay.

14 Q Of Exhibit 125. And my question is  
15 does that refresh your recollection that the big  
16 giant behemoth does include the claims we see  
17 here on page 64 and 65?

18 A I have no recollection about the  
19 behemoth Exhibit to which you've just referred  
20 other than it exists. And when I look at the  
21 certification report here in 345 for royalty year  
22 2004, I do see, and I can confirm that MK has

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1 asserted a claim for Healthy Living, Today's  
2 Health, 2, 3, 4, 5, 6, 7 and 8.

3 I do not see in 2004, despite the fact  
4 that it appears on this spreadsheet that you have  
5 just handed me as 127, I do not see any reference  
6 to the show -- the series title Parenting and  
7 Beyond.

8 And actually -- yes, 8 and 7 and 6,  
9 Today's Health, 6, 7, 8, appear on the 127. And  
10 they appear in my 2004 certification report.

11 Q I'm sorry, when you said 6, 7, 8,  
12 you're referring to Today's Health?

13 A Yes. Today's Health, yes.

14 Q But there -- I'm looking at Exhibit  
15 345, is not --

16 A Oh, I'm so sorry, you're absolutely  
17 right. On the very next page -- it would help if  
18 you would point me to these things Mr. Boydston.

19 Yes, I see that we have a claim here  
20 for Healthy Living Parenting and Beyond 4, 5, and  
21 6.

22 Q Okay. But not 7 or 8 or 9.

1           A       Or 10 or 11 or all the ones you have  
2       on --

3           Q       Now, so it's quite clear that the  
4       behemoth if you will, the document produced in  
5       response to the Judge's July 30 Order, is not  
6       consistent with the certifications, is it?

7                   MR. MacLEAN:  Objection.

8                   MS. PLOVNICK:  Objection.

9                   MR. BOYDSTON:  It must have been a  
10       good one.

11                   MS. PLOVNICK:  Yes.  Well, I have a  
12       couple here.  First, this document --

13                   MR. BOYDSTON:  Which document?

14                   MS. PLOVNICK:  I'm looking at IPG  
15       Exhibit and I don't know what Exhibit you have --

16                   MR. BOYDSTON:  127.

17                   JUDGE BARRETT:  Which is not admitted.

18                   MS. PLOVNICK:  Which is not admitted.  
19       Well, all right, well that got into another  
20       objection.

21                   MR. MacLEAN:  That's my objection.

22                   MS. PLOVNICK:  I thought I missed

1 that. All right, well so anyway this -- I'm not  
2 clear exactly which royalty years are being  
3 addressed on which page. I know there's some  
4 handwritten notes and they're kind of clipped  
5 together and I'm not sure if I'm a hundred  
6 percent clear.

7 But this hasn't impeached Ms. Saunders  
8 because --

9 JUDGE BARRETT: It was only offered to  
10 refresh recollection. And I think Ms. Saunders  
11 has testified at least twice that it does not  
12 refresh her recollection.

13 MS. PLOVNICK: So I -- well, I object  
14 to its admission and I --

15 JUDGE BARRETT: It hasn't been  
16 offered. Has it?

17 MR. BOYDSTON: Not yet.

18 JUDGE BARRETT: Okay.

19 MS. PLOVNICK: Well also, I object to  
20 the question that he asked her to make. Because  
21 it -- it misconstrued -- I mean, --

22 MR. BOYDSTON: Your Honor, let --

1 MS. PLOVNICK: I'm confused as to what  
2 all he is looking at here. And because if you  
3 simply look through Exhibit 345 as Ms. Saunders  
4 was trying to do, all of these titles are here.

5 MS. SAUNDERS: I just found it. I  
6 just found 10, 11 and all the other's  
7 characterizing the obligation.

8 MS. PLOVNICK: So it's really -- it's  
9 really -- so to me, I'm confused. I'm sure she's  
10 confused. And I'm not sure that anything's  
11 either being refreshed or that -- I think she's  
12 -- anyway. So --

13 JUDGE BARRETT: Overruled. Well go  
14 ahead Mr. Boydston.

15 MR. BOYDSTON: Okay. Ms. Saunders I  
16 believe you may have found something additional?

17 MS. SAUNDERS: Yes I did. I just see  
18 on another page of the certification report under  
19 Exhibit 345 that the Healthy Parenting and  
20 Beyond, there are many additions of Today's  
21 Health and Parenting and Beyond claimed by this  
22 claimant.

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1 JUDGE STRICKLER: What page are you  
2 on?

3 MS. SAUNDERS: I'm sorry, Your Honor.  
4 I am on -- well, I was on a couple. Let's see, I  
5 was on --

6 JUDGE STRICKLER: Just the numbers  
7 will do.

8 MS. SAUNDERS: C04426 and C04428 and  
9 C04991. There might be another one, hang on.

10 JUDGE STRICKLER: So now you're going  
11 into 2005 as well, right?

12 Ms. SAUNDERS: Oh yes, I'm up to 2000  
13 -- yes, that was through '05, that's correct. I  
14 don't see -- at first glance I don't see any  
15 other references in 2006 for that particular  
16 title.

17 MR. BOYDSTON: Yes, let me stop you  
18 there because I'm not interested in that one in  
19 just a moment. Let's just focus on 2004 in  
20 Exhibit 345 and Exhibit -- and 2004 in Exhibit  
21 127.

22 And Exhibit 127, the pages relevant to



1 2004 are the first one, where it's marked 2004  
2 and the second and the third. Not the fourth  
3 which is marked 2005 or anything after that.

4 MS. SAUNDERS: Okay.

5 MR. BOYDSTON: Which would clear up  
6 any confusion about the year I hope.

7 MS. SAUNDERS: Okay.

8 MR. BOYDSTON: Now, on the bottom of  
9 page 64, Parenting and Beyond --

10 JUDGE BARRETT: Mr. Boydston, this  
11 Exhibit is not admitted. We're not going to  
12 testify to the contents unless it's offered and  
13 admitted.

14 MR. BOYDSTON: Well, I'll off it for  
15 admission Your Honor.

16 MS. PLOVNICK: I object on all the  
17 basis I already articulated. It's -- I mean it's  
18 not clear to me that this document is reflective  
19 of what he -- that the foundation's been laid.  
20 That it reflects what he's purported it is. What  
21 years it even covers. They're all not clear.

22 JUDGE BARRETT: Sustained.

1 MR. BOYDSTON: I'll ask one last  
2 question on this because I'm confused as what the  
3 answers may have been. And it may have been  
4 elicited perfectly and I just don't remember.  
5 And if so I apologize. And so I want to make  
6 sure I get it right.

7 Is it your understanding that the  
8 spreadsheet produced in response to the July 30  
9 Order is consistent with the program lists in  
10 document 345 and others similar to it?

11 MS. PLOVNICK: Objection, asked and  
12 answered.

13 JUDGE BARRETT: Overruled. Let's get  
14 a clear and direct answer to this clear question.

15 MS. SAUNDERS: I directed my counsel  
16 to prepare the electronic file that is known as  
17 MPAA Owner Title 2000 to 2009 drawing from the  
18 hard copy certification reports that we keep as  
19 business records that have been produced to you  
20 in the discovery.

21 I did not prepare that Excel  
22 spreadsheet. If you're asking me if it's

1 possible there is a mistake in it? I would --  
2 it's possible. It's possible.

3 But yes, it is supposed to be -- the  
4 Excel spreadsheet is supposed to be a compilation  
5 of the certification reports and the titles that  
6 we claim, excepting that of course as I  
7 mentioned, the hard copy certifications provide  
8 additional information and deletions in terms of  
9 titles.

10 So they are quite valuable as a  
11 reference, which is why we produced them.

12 BY MR. BOYDSTON:

13 Q Okay. I appreciate that answer. I  
14 think it helps clarify the record. And I hate to  
15 do this in a way, but I have to. So is the  
16 answer yes, it is the same, or no, it's not?

17 A You are asking me to tell you -- let  
18 me be sure I understand. You are asking me to  
19 tell you under oath that the Excel spreadsheet  
20 prepared by my lawyers called MPAA Owner Title  
21 2000 to 2009 is in fact a perfect copy, or a  
22 perfect record of every title to which MPAA has

1 certified entitlement to claim royalties in this  
2 proceeding.

3 And I can tell you with a distinct  
4 certainty that I cannot.

5 Q Fair enough. Thank you. Please  
6 reference Exhibit 336. And in conjunction with  
7 that, please take a look at what was marked as  
8 Exhibit 125, which are several Copyright Office  
9 -- it's not, it's a separate document.

10 A I'm sorry, okay. Okay.

11 Q There are a copy and printouts from  
12 the copyright website.

13 MS. PLOVNICK: Your Honor, this line  
14 of questioning, he already did this once and Your  
15 Honor wouldn't allow this. I'm going to object  
16 to it again on the same basis.

17 MR. BOYDSTON: But Your Honor I don't  
18 believe I referenced 125 in any of my questions  
19 to Ms. Saunders. I referenced them in regards to  
20 questions to Mr. Galaz.

21 JUDGE BARRETT: Overruled. I'm not  
22 sure where we are on this. But go ahead Mr.

1 Boydston.

2 MS. SAUNDERS: I'm sorry, I don't --

3 MR. BOYDSTON: May I approach Your  
4 Honor?

5 JUDGE BARRETT: You may.

6 MS. SAUNDERS: I can't find 125. Is  
7 it in this one?

8 MR. BOYDSTON: It's not in the book.

9 MS. SAUNDERS: Oh.

10 MS. WHITTLE: It is in the binder  
11 isn't it?

12 MR. BOYDSTON: Oh, it was put in the  
13 binder. Oh good. Thank you Ms. Whittle.

14 Now, we're kind of asking you about  
15 both Exhibits, so if you can juggle the tab.

16 MS. SAUNDERS: Um-hum. Um-hum.

17 BY MR. BOYDSTON:

18 Q Okay. Now first looking at Exhibit  
19 130 -- or excuse me, 336.

20 A Yes.

21 Q On the second page under property  
22 title, the first title is Action Man. The second

1 title is Angela Anaconda. Do you see that?

2 A Yes.

3 Q Now look at the first page of Exhibit  
4 125 and under title it says Angela Anaconda,  
5 doesn't it?

6 MR. MacLEAN: Objection. Your Honor,  
7 at least according to our records over here, IPG  
8 125 is not in evidence.

9 MR. BOYDSTON: You know, Your Honor,  
10 I think that might be correct.

11 MS. PLOVNICK: I think Your Honor  
12 actually may have rejected it, but I'm not sure.

13 MR. BOYDSTON: It was rejected. I was  
14 trying to admit it by Mr. -- I was trying to  
15 admit it -- yes, I think I tried to admit it with  
16 Mr. Galaz.

17 Your Honor, I'd like to move to admit  
18 Exhibit 125 based on judicial notice. This is a  
19 public record obtained off the Copyright website,  
20 which is maintained by the Copyright Office. And  
21 is a well respected governmental agency.

22 I think this could be accorded due

1 deference.

2 MS. PLOVNICK: I mean, we acknowledge,  
3 these are web searches of the public records.  
4 They're not actually Copyright Officer  
5 registrations. But we don't dispute that they  
6 come off the internet and that they are searches  
7 of a public search engine.

8 You know, I -- but --

9 JUDGE BARRETT: They are what they  
10 purport to be.

11 MS. PLOVNICK: They are what they  
12 purport to be. I mean, you know, we really  
13 object on relevance grounds I believe here.

14 And in our other further objection  
15 that we articulated yesterday is that counsel is  
16 trying to now address additional titles that were  
17 not addressed in the written rebuttal statement  
18 of IPG that was filed on October 15. They're  
19 trying to attack additional titles or append  
20 them.

21 And our understanding was you had to  
22 raise all your claims objections by October 15

1 and he didn't do that with regard to additional  
2 titles he's raising now for the first time in  
3 MPAA's rebuttal to IPG.

4 JUDGE BARRETT: Okay. Mr. Boydston  
5 can you respond to the objection that this is  
6 introducing objections to claims that were not  
7 previously identified?

8 MR. BOYDSTON: Yes. This is in  
9 rebuttal to the witnesses testimony that the  
10 programs claimed in the certifications are  
11 rightly claimed and owned by the MPAA's agents  
12 and their assigns.

13 The 336 purports to say that Angela  
14 Anaconda, the rights to Angela Anaconda are held  
15 by -- I'm sorry, I can't read the title of the  
16 entity that this is for. It is ABC Family  
17 Worldwide. When in fact the first page of  
18 Exhibit 125 indicates otherwise.

19 MS. PLOVNICK: Your Honor, that would  
20 be surrebuttal. Because these documents were  
21 part of MPAA's rebuttal to IPG. Now this is a  
22 surrebuttal to the rebuttal.

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1 MR. BOYDSTON: No, we -- and in our  
2 own initial rebuttal statement, we challenged all  
3 of the ABC titles. This is a specific --

4 JUDGE BARRETT: The objection is  
5 overruled. 125 is admitted.

6 (Whereupon, the above-referred to  
7 document was received into evidence as  
8 IPG Exhibit No. 125.)

9 MR. BOYDSTON: Thank you, Your Honor.  
10 Now, Ms. Saunders, taking a look at  
11 Exhibit 125, as I said, the title says Angela  
12 Anaconda. And the party, number one says Decode  
13 Entertainment. Would you agree with me?

14 MS. SAUNDERS: Yes.

15 MR. BOYDSTON: Now, taking a look at  
16 the second page of -- well, no let's go first to  
17 336. With regard to 336 on the -- it will be the  
18 third page of 336 about three quarters of the way  
19 down the list it says --

20 JUDGE BARRETT: Excuse me, 336 is a  
21 restricted Exhibit.

22 MR. BOYDSTON: Oh, I'm sorry, Your

1 Honor.

2 JUDGE BARRETT: Ms. Saunders, I know  
3 you have a travel schedule. How much longer are  
4 you going to be Mr. Boydston?

5 MR. BOYDSTON: Not very. This is  
6 about the last thing I have to cover.

7 JUDGE BARRETT: Okay. And Mr.  
8 MacLean, are you going to have questions for Ms.  
9 Saunders?

10 MR. MacLEAN: No cross for this  
11 witness.

12 MS. PLOVNICK: A very brief redirect.

13 JUDGE BARRETT: Is it in everyone's  
14 interest for us to continue and then delay our  
15 noon break?

16 MR. BOYDSTON: I think I can take  
17 about 45 seconds.

18 JUDGE BARRETT: Can everyone bear out  
19 if we do that?

20 MR. MacLEAN: Absolutely.

21 JUDGE BARRETT: I think it's better  
22 then having Ms. Saunders come back at 1:00 and

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1 then have to face the highway patrol.

2 MR. BOYDSTON: May I continue Your  
3 Honor?

4 JUDGE BARRETT: Mr. Boydston, you may.

5 BY MR. BOYDSTON:

6 Q You see where it references Power  
7 Rangers Lightspeed Rescue, Power Rangers Lost  
8 Galaxy?

9 A Oh, I'm so sorry, I -- oh, are we on  
10 336? I'm sorry.

11 Q On 336 --

12 A Hang on.

13 Q Third page. The one page down.

14 A Yes, I see Power Rangers Lightspeed  
15 Rescue and Lost Galaxy, yes.

16 Q Now looking at the second page of  
17 Exhibit 125.

18 A Um-hum.

19 Q Now you see that it says title Power  
20 Rangers and then it says claimant Saban  
21 Entertainment?

22 A Yes.

1 Q Please take a look at 336, the same  
2 Exhibit we were on.

3 A Um-hum.

4 Q And --

5 JUDGE STRICKLER: Why don't you just  
6 say the Bates Number, it's a lot easier that way.

7 MR. BOYDSTON: Yes, I will. I'm  
8 sorry, I'm looking for it. Oh, here we go.  
9 Bates Number 04666 and I believe there it  
10 references Where on Earth is Carmen Sandiego,  
11 correct?

12 MS. SAUNDERS: Okay, hold a minute.  
13 I'm sorry, Mr. Boydston, I'm not finding that.  
14 Can you tell me the --

15 BY MR. BOYDSTON:

16 Q Yes, it's --

17 A Oh, give me the Bates Number again.  
18 046?

19 Q 04666

20 A Thank you. Thank you, thank you.  
21 Okay. Where on Earth is Carmen Sandiego? Yes.

22 Q Okay. And then looking on Exhibit

1 125, the last page of Exhibit 125. You see it  
2 says title Where on Earth is Carmen Sandiego?

3 A Yes.

4 Q And copyright claimant is listed as  
5 DIC Productions, LLP, correct?

6 A Yes.

7 MR. BOYDSTON: Thank you. Nothing  
8 further Your Honor.

9 MS. PLOVNICK: So Mr. MacLean, you  
10 didn't have additional cross did you?

11 MR. MacLEAN: Thank you, but no.

12 MS. PLOVNICK: Okay. I just wanted to  
13 make sure I wasn't jumping the gun. Okay.

14 JUDGE STRICKLER: Are we out of  
15 restricted?

16 REDIRECT EXAMINATION

17 MS. PLOVNICK: I think we -- I mean I  
18 might -- I'm not really going to go into the  
19 substance I don't think of anything. If I do,  
20 I'll try to let you know. So I think we're out.

21 Okay. Let me get my track here. All  
22 right. So Ms. Saunders, could you please start

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1 with you were asked some questions about MPAA  
2 Exhibit 346 by Mr. Boydston.

3 MS. SAUNDERS: Yes, yes. Oh, here it  
4 is.

5 BY MS. PLOVNICK:

6 Q And so if you could look at that  
7 letter and flip to what's attached as Exhibit 5.

8 A Okay.

9 Q To that letter, which is in MPAA  
10 Exhibit 346.

11 A I'm going as fast as I can turn the  
12 pages. Hold on. Okay, I'm up to 7.

13 MR. BOYDSTON: This is 345 A?

14 MS. SAUNDERS: I have it. I have it,  
15 yes.

16 MS. PLOVNICK: This is 346, I'm sorry.  
17 346 is just the Fintage letter.

18 MS. SAUNDERS: This is the  
19 representation agreement between Fintage and  
20 Televisa.

21 BY MS. PLOVNICK:

22 Q So just -- so that was actually my --

1 you anticipated my question. So it was what is  
2 Exhibit 5?

3 A Yes.

4 Q And you answered this is an agreement  
5 between Fintage and Televisa.

6 A It's a representation agreement, yes,  
7 between those two parties.

8 Q All right. And then -- and it's dated  
9 as of January 1, 2003?

10 A January 1, 2003, yes.

11 Q All right. Now if you flip to Exhibit  
12 6 and that is also still within MPAA Exhibit 346.

13 A Yes, yes.

14 Q What is that document?

15 A This is a secondary rights deal memo  
16 between Fintage Publishing and TV Azteca.

17 Q And that's dated?

18 A March 1, 2004.

19 Q Okay. And then flip to Exhibit 7 to  
20 the Fintage letter.

21 A Yes. Representation agreement between  
22 EGEDA and Fintage dated September 19, 2001.

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1           Q       So Mr. Boydston asked you I believe,  
2 I'm trying -- there were a lot of questions here.  
3 But he asked you whether there was an agreement  
4 in the record between Fintage and EGEDA?

5           A       Yes.

6           Q       And I remember what your answer was.  
7 But is your -- do you now have the answer to that  
8 question?

9           A       Yes, there is a representation  
10 agreement, yes in the record, yes.

11          Q       Does it refresh your recollection?

12          A       Yes, yes.

13          Q       So, and that would be Exhibit 7.

14          A       That is the Exhibit 7.

15          Q       To the Fintage.

16          A       I apologize for not reacting quicker  
17 when Mr. Boydston was questioning me.

18                 JUDGE STRICKLER: It's on the record  
19 as MPAA's Exhibit 7 to Exhibit 346.

20                 MS. PLOVNICK: Thank you, it is --

21                 MS. SAUNDERS: Yes.

22                 MS. PLOVNICK: Thank you, Your Honor.

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1 It is Exhibit 7 to MPAA Exhibit 346.

2 MS. SAUNDERS: Correct.

3 MS. PLOVNICK: Which is a letter from  
4 Fintage to Ms. Saunders.

5 MS. SAUNDERS: Yes.

6 BY MS. PLOVNICK:

7 Q Okay. Now, let's go to the next  
8 Exhibit, MPAA Exhibit 347.

9 A Um-hum.

10 Q Mr. Boydston also asked you about this  
11 Exhibit during his cross. If you flip to the  
12 second page of the letter, which is the first  
13 document in MPAA Exhibit 347, could you read the  
14 very last sentence of numbered paragraph 2 into  
15 the record?

16 A We wish to clarify that Screenrights  
17 is not -- underline not -- asserting a claim for  
18 royalties for IPG's The Outdoorsman with Buck  
19 McNeely.

20 Q Do you know if Screenrights had  
21 originally certified the title The Outdoorsman  
22 with Buck McNeely for any royalty years?

1 A I do not know if they have.

2 Q Would looking at the certification  
3 refresh your memory?

4 A Oh, I'm sorry, yes.

5 Q So --

6 A Yes, it would. Where is that  
7 certification?

8 Q Let me find it. And perhaps -- I  
9 believe it's Exhibit 338. And I think we looked  
10 at this yesterday, but it was --

11 A Oh, yes. Okay.

12 Q It was on the very last page of that  
13 Exhibit actually.

14 A Of going to royalty 2009?

15 Q Going to year 2009.

16 JUDGE FEDER: Can you give me the  
17 Bates Number please?

18 MS. PLOVNICK: I can try. It looks  
19 like it's MPAA-S-0922 and then there's a whole  
20 punch. And so it might be 223?

21 JUDGE BARRETT: It is. I think we  
22 established that.

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1 MS. PLOVNICK: Yes.

2 MS. SAUNDERS: Yes. In fact it does  
3 show Screenrights as a claimant for The  
4 Outdoorsman with Buck McNeely.

5 BY MS. PLOVNICK:

6 Q So, would this be an example of a  
7 claimant making a mistake?

8 A This is a mistake, yes. And  
9 claimants, we try our level best as do our  
10 claimants to ensure that they accurately claim  
11 all the titles that they should.

12 In time -- from time to time claimants  
13 make mistakes. That is unfortunately the case.

14 Q Right. So and you -- so because on  
15 the certification --

16 MR. BOYDSTON: Your Honor, I'm so  
17 sorry. I just noticed that this was restricted.

18 JUDGE BARRETT: Oh, it is. I'm sorry.

19 MS. PLOVNICK: I'm sorry. And we did  
20 go into some, I'm sorry, Your Honor. So -- and I  
21 should have said something.

22 So if you could please leave the room.

1 Because we did go in -- and I apologize. I'm  
2 trying to go as fast as I can to get Ms. Saunders  
3 out.

4 JUDGE STRICKLER: Before you ask the  
5 question, Ms. Saunders you said claimants  
6 sometimes make mistakes.

7 MS. SAUNDERS: Um-hum, yes.

8 JUDGE STRICKLER: What if anything  
9 does the MPAA do to review what the claimants  
10 have submitted to see if there are mistakes?

11 MS. SAUNDERS: Well, Your Honor,  
12 frankly we take their certification at -- we take  
13 the certification as proof that they are entitled  
14 to claim.

15 If we find subsequently that we have  
16 distributed monies to a claimant in respect to a  
17 title that they should not have and avert later  
18 that they should not have received monies for.  
19 We would recoup those monies.

20 JUDGE STRICKLER: So you don't -- you  
21 don't check to see if there was a mistake unless  
22 and until there's a dispute with regard to money

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1 that's already been distributed?

2 MS. SAUNDERS: Yes, that's correct,  
3 Your Honor.

4 JUDGE STRICKLER: Thank you.

5 BY MS. PLOVNICK:

6 Q Now do you do any process for if you  
7 have two claimants that claim the same title --

8 A Of course.

9 Q For example, do you take any --

10 A Yes. Yes.

11 Q Efforts to ensure accurate  
12 distribution?

13 A Yes. Our representation agreement  
14 provides for conflict resolution rules. And we  
15 do take action in a case that a title is claimed  
16 by more than one party. We would not distribute  
17 the money until that conflict was resolved.

18 Q What would you do with the money  
19 pending resolution of the parties?

20 A We would hold it in escrow.

21 JUDGE STRICKLER: I suppose my  
22 question was a little broader. With regard to

1 all of the claims that are referenced in not just  
2 these documents, but ultimately in your  
3 Appendices A and B, is there a quality control  
4 activity undertaken by MPAA to make sure that  
5 what the claimants have submitted is in fact  
6 accurate or not?

7 MS. SAUNDERS: The only quality  
8 control -- well, we of course review every  
9 certification upon receiving it. And we -- but  
10 we do not know, we can't judge ownership of our  
11 claimants. We can only take their certifications  
12 as their certifications.

13 And unless there is a dispute inside  
14 of the MPAA group, we would not know that they  
15 had made a mistake.

16 JUDGE STRICKLER: Thank you.

17 BY MS. PLOVNICK:

18 Q And Ms. Saunders, turning you back to  
19 MPAA Exhibit 346 -- I'm sorry, 347, what was the  
20 date of that letter again?

21 A I don't -- I'm sorry --

22 Q I think it's on the last page.

1 A 47? 347?

2 Q 347, that's the Screenrights letter.

3 A Yes. That date was November 24, 2014.

4 Q So this would be when you were made  
5 aware that that mistake had been made?

6 A Oh, yes.

7 Q With regard to this?

8 A Yes. That would have been the first  
9 time.

10 Q And that was November 24 of this year?

11 A Yes. Yes.

12 Q Okay. All right, so -- all right, let  
13 me just look -- direct your attention quickly to  
14 --

15 A May I just clarify one thing for the  
16 Court?

17 Q Sure.

18 A Because I think it's important. And  
19 this is a misunderstanding that I encounter often  
20 in my work.

21 Cable operators and satellite  
22 operators do not pay royalties on a title by

1 title basis. They pay on a blanket basis.

2 MR. BOYDSTON: Your Honor, there's no  
3 question pending and this is a speech.

4 MS. SAUNDERS: It's not a speech.  
5 It's information to the Court because the Judge  
6 has raised a question about what we do in this  
7 instance.

8 So the fact that we may have --

9 JUDGE STRICKLER: Do you want to rule  
10 here?

11 JUDGE BARRETT: Yes, yes. The  
12 objection is sustained. And we're aware of how  
13 the cable --

14 MS. SAUNDERS: Okay.

15 JUDGE BARRETT: And satellite  
16 providers pay their royalties.

17 MS. SAUNDERS: All right, thank you,  
18 Your Honor.

19 JUDGE BARRETT: Okay.

20 MS. PLOVNICK: Ms. Miller I just -- I  
21 mean sorry, Ms. Saunders, I was going to direct  
22 you to IPG Exhibit 332, which is

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1 JUDGE STRICKLER: SDC?

2 MS. PLOVNICK: IPG Exhibit 332.

3 MS. SAUNDERS: Wait a minute, hold on  
4 a second.

5 JUDGE STRICKLER: No, that can't be  
6 right, Exhibit --

7 MS. PLOVNICK: No, I'm sorry, I'm  
8 saying the wrong number. 32, I'm retreating.  
9 IPG Exhibit 32.

10 MS. SAUNDERS: Okay, hold on a minute.

11 MS. PLOVNICK: I have so many numbers  
12 that I am getting confused. I apologize.

13 MS. SAUNDERS: 32?

14 MS. PLOVNICK: IPG, it's -- the tab  
15 says IPG - P-032.

16 MS. SAUNDERS: Okay, I have it.

17 MS. PLOVNICK: And this has already  
18 been admitted.

19 MS. SAUNDERS: Okay.

20 MS. PLOVNICK: I believe.

21 MR. MacLEAN: In part.

22 MS. PLOVNICK: In part.

1 MS. SAUNDERS: Are we still in  
2 restricted Judge?

3 JUDGE BARRETT: No. This document is  
4 not restricted.

5 BY MS. PLOVNICK:

6 Q So when you're there. Are you there?

7 A I'm there. I'm there.

8 Q Okay. So if you flip to the second  
9 page into numbered paragraph 4.

10 A Um-hum.

11 Q You see reference to titles Healthy  
12 Living and Healthy Living Mysteries of the Mind?

13 A I do.

14 Q Do you see any reference to Parenting  
15 and Beyond?

16 A No, I do not.

17 Q Or the other -- or the -- and I'm  
18 blanking on the other, but I'm thinking it was  
19 Parenting Beyond or Today's Health?

20 A No, I do not.

21 Q Neither of those are referenced here,  
22 are they?

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1 A No, they're not.

2 Q So, and now --

3 MR. MacLEAN: Your Honor, I said this  
4 declaration was admitted in part. I was wrong.  
5 This declaration was admitted in full. I just  
6 wanted to clarify that.

7 JUDGE BARRETT: Okay. Thank you Mr.  
8 MacLean.

9 BY MS. PLOVNICK:

10 Q So now, let me just turn -- divert  
11 your attention to MPAA Exhibit 345, which is the  
12 Transworld certification. And Mr. Boydston asked  
13 you a lot of questions about these.

14 And I think it was clear, but in the  
15 event it was -- you know, it was a little  
16 confusing to me as I said a couple of times, you  
17 know.

18 So can you please clarify, did  
19 Transworld certify the titles Healthy Living  
20 Parenting and Beyond for certain royalty years?

21 A Hold on, hold on. I know the answer.  
22 Already forgotten. I'm just going to look

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1 through their certification reports here ,under  
2 345. And I see Healthy Living Today's Health.  
3 And I do see Healthy Living Parenting and Beyond.

4 Q Right. And but those titles were not  
5 addressed in the Exhibit that we just looked at.

6 A No.

7 Q The IPG Exhibit.

8 A No, those titles are not addressed by  
9 Ms. Millen in her declaration to IPG.

10 Q So the titles that were addressed,  
11 Healthy Living and Healthy Living Mysteries of  
12 the Mind, do you see those on the Transworld  
13 certification? And let me just try to speed you  
14 up if I can help you find it.

15 A Okay.

16 JUDGE BARRETT: I might suggest that  
17 the witness look at Bates stamp 6529.

18 MS. SAUNDERS: 6529? Sure.

19 MS. PLOVNICK: Oh, yes.

20 JUDGE STRICKLER: It's the first page.

21 MS. PLOVNICK: Oh, yes. MPAA S.

22 JUDGE STRICKLER: We're on the MPAA.

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1 MS. PLOVNICK: MPAA 06529.

2 MS. SAUNDERS: Okay, thank you. Thank  
3 you, Your Honor. Thank you. I do see Healthy  
4 Living Mysteries of the Mind.

5 BY MS. PLOVNICK:

6 Q What royalty year was that?

7 A 2003.

8 Q 2003, okay.

9 A Yes.

10 Q And then do you see Healthy Living  
11 certified for --

12 A Any of the other years?

13 Q For other -- I mean, I think that --  
14 well, I believe Healthy Living Mysteries of the  
15 Mind was certified for 2003 only. But you can  
16 confirm.

17 A That is the only one I see so far of  
18 Healthy Living -- excuse me Mysteries of the  
19 Mind. I do not see -- I'm up to 2006, hold on.  
20 No. I do not see it again.

21 Q And then if you look at what's been  
22 Bates stamped MPAA-C-04428. I believe Healthy

1 Living by itself is certified as to 2004 cable.  
2 Can you please confirm?

3 A As to what year, I'm sorry?

4 Q 2004 cable and satellite actually have  
5 '04 too.

6 A Okay. I actually only see Healthy  
7 Living Today's Health and Healthy Living  
8 Parenting and Beyond in the 2004 cable and  
9 satellite certification unless you put --

10 Q If you keep flipping I believe,  
11 MPAA-C-004428. And then the last number -- I  
12 don't know if it's --

13 A Bates stamps are not exactly in order.

14 Q Sorry.

15 A So I'm not -- 00425, 7, 8. Okay, I'm  
16 sorry. Say it again? Oh, yes. Yes. Yes.  
17 2004, I apologize, Healthy Living is on the next  
18 to last page I think of that certification report  
19 all by itself.

20 Q And those same titles were the ones  
21 that Mr. Hochberg addressed in MPAA Exhibit 352,  
22 which is his letter to you?

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1 A Um-hum.

2 Q Regarding Healthy Living Mysteries of  
3 the Mind.

4 A Yes. In his letter he addresses  
5 Healthy Living Mysteries of the Mind and Healthy  
6 Living. And he specifies the royalty year. But  
7 he confirms the certifications that we have just  
8 reviewed and looked at.

9 Q Yes. All right. Now, all right. So,  
10 Ms. Saunders, let's turn to MPAA 336.

11 A 336, okay.

12 Q Now Ms. Saunders, Mr. Boydston showed  
13 you some public searches of the copyright records  
14 for certain titles.

15 A Um-hum.

16 Q And you talked about one of those with  
17 regard to DragonBall Z earlier. But you know, he  
18 showed them to you and he compared them with this  
19 document.

20 Do you have any -- having reviewed  
21 those documents, do you, based on your personal  
22 knowledge and experience, have any -- do you know

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1       whether or not the -- those registrations have  
2       any information regarding retransmission royalty  
3       entitlement to these particular --

4               A       No.

5               MR. BOYDSTON:  Objection Your Honor.  
6       Leading.

7               MR. MacLEAN:  And asked and answered.

8               JUDGE BARRETT:  I will sustain.

9               BY MS. PLOVNICK:

10              Q       So, would the same comments that you  
11       made with regard to the DragonBall Z document  
12       which I don't have that, IPG --

13              A       I recall it.  I recall it.

14              Q       If you recall it?

15              A       I recall it.  I recall my comments,  
16       yes.

17              Q       Would those same comments apply to  
18       those additional registrations?

19              A       Yes.       They would apply to any  
20       situation in which the substantiation for  
21       retransmission royalties was based solely on a  
22       copyright certificate.  They are not indicative



1 of ownership or entitlement to claim  
2 retransmission royalties.

3 Q In addition, with regard to Saban, I  
4 think that was mentioned in one of the documents  
5 that --

6 A Power Rangers, yes.

7 Q Yes. Do you have any knowledge  
8 regarding Saban and it's relationship with Fox  
9 Family or ABC Family?

10 A I have some knowledge that Fox and  
11 Saban did business together and they are  
12 connected. But I do not -- I cannot say more  
13 specifically than that what it is.

14 Q But you have some knowledge that they  
15 are connected?

16 A Yes.

17 Q All right. Okay. All right, so just  
18 -- Ms. Saunders, for the last time, just to -- so  
19 that we can try to get the record clear, so you  
20 talked about with Mr. Boydston yet again, the  
21 Excel spreadsheet and the genesis of the Excel  
22 spreadsheet.

1 A Yes.

2 Q Can you please just give us a  
3 chronology explaining, just very briefly, how  
4 the -- your -- so like written testimony was  
5 filed in this case in May.

6 A Yes.

7 Q What documents were produced to IPG  
8 that underlie that testimony?

9 A That underlied the May -- my May  
10 testimony that was filed in my direct case -- or  
11 our direct case of my testimony?

12 Q Yes.

13 A The hard copies of all the  
14 certification reports upon which we relied in  
15 making our claims, the claimants entitles of  
16 which are enumerated or listed in --  
17 respectively, with claimants in Exhibit A, titles  
18 in Exhibit B to both of those testimonies.

19 Q And those were the documents -- were  
20 those documents the documents that were relied on  
21 in creating your catalysts that were attached to  
22 your testimonies?

1 A Yes. Yes.

2 Q And were those produced to IPG?

3 A Yes they were.

4 Q Do you know when they were produced to  
5 IPG?

6 A I do not recall. I am so sorry.

7 Q Would June 2014?

8 A It was sometime, it would have been  
9 after the filing of our direct case, yes.

10 Q Okay. And then later, subject to an  
11 order of the Judges --

12 A Correct.

13 Q At that point in time, what happened?

14 A The Judges ordered us in late July as  
15 I recall, to produce an electronic database that  
16 contained the information about title -- that  
17 contained the information of our certification  
18 report information over our statement that we did  
19 not have such an electronic database.

20 And I then instructed my counsel to  
21 prepare an electronic database taking information  
22 from the certification reports and putting it

1 into the Excel file that we would create.

2 Q Was an effort made to be accurate in  
3 the Excel spreadsheet?

4 A Absolutely. Absolutely. Very great  
5 effort.

6 Q But was it possible to capture all  
7 handwritten notes in the Excel spreadsheet?

8 A No, it was not possible. And I've  
9 said that at least three times in this testimony.  
10 That we could not put all the handwritten notes  
11 into the electronic database. Or my lawyers  
12 couldn't.

13 JUDGE BARRETT: So let me just this  
14 time make sure we're clear. Did you request or  
15 did your attorneys produce an electronic database  
16 or a spreadsheet?

17 MS. SAUNDERS: A spreadsheet. I  
18 apologize Your Honor. I made the mistake that  
19 Mr. Boydston has made a few times. Confusing  
20 data with databases.

21 BY MS. PLOVNICK:

22 Q In MPAA Exhibit 333 has the file name

1 of the Excel spreadsheet that was produced. And  
2 So if you would like to -- would that refresh  
3 your memory?

4 A That would be -- yes. Isn't it -- I  
5 believe it's MPAA Owner Title 2000 to 2009.  
6 6308249 xls.

7 Q And it's an Excel spreadsheet?

8 A It's an Excel spreadsheet, yes.

9 JUDGE STRICKLER: If I may interject.  
10 I'm taking a look at the July 30 Order that we're  
11 talking about. And at the front, the final part  
12 that summarizes what is being ordered, on page 24  
13 of that July 30 Order, it says the Judges grant  
14 the IPG-MPAA Motion in part and Order MPAA to  
15 produce in electronic form any data that it  
16 maintains in electronic form that identifies for  
17 each year covered by this proceeding, the  
18 claimants it represents, the agents through who  
19 it represents those claimants, the program titles  
20 it represents and the claimants associated with  
21 those program titles.

22 MS. SAUNDERS: Yes.

1 JUDGE STRICKLER: That particular  
2 Order, that's the portion of the Order that we're  
3 talking about now, correct?

4 MS. PLOVNICK: Yes, Your Honor.

5 JUDGE STRICKLER: Okay. And so you --  
6 so MPAA was required to produce in electronic  
7 form any data that it maintains, not produce in a  
8 certain -- and as counsel would be aware, and  
9 your attorney as well, not create.

10 MS. SAUNDERS: Yes, I understand.

11 JUDGE STRICKLER: This is my  
12 understanding that despite the fact that you did  
13 not indeed maintain anything in that type of  
14 form, electronic spreadsheet form, that you  
15 created one.

16 MS. SAUNDERS: Yes.

17 JUDGE STRICKLER: In an attempt to  
18 provide --

19 MS. SAUNDERS: To comply with the  
20 Order and to facilitate IPG's review of the pages  
21 of certifications. Your Honor, I think that the  
22 responsibility for this unfortunately lies with

1 me.

2 I am a lawyer. I understand the  
3 difference between creation versus what you have  
4 in your possession when you're ordered to compel.

5 However, and I had a fairly animated  
6 conversation I believe with Mr. Lanard about this  
7 order in which I urged him not to appeal that  
8 order, but to try to comply with it to the best  
9 of our abilities by creating this document.  
10 Because I wanted to demonstrate our good faith in  
11 producing in discovery, information that was  
12 sought by IPG.

13 JUDGE BARRETT: Okay, but your  
14 reference is in the record to the Judges'  
15 Ordering the creation of this electronic  
16 spreadsheet is shorthand.

17 MS. SAUNDERS: I'm speaking too  
18 loosely, Your Honor, and I apologize.

19 JUDGE BARRETT: Thank you.

20 MR. BOYDSTON: Your Honor, for the  
21 record, I renew my objection to Exhibits 336  
22 through 337 and 339 to 347 based upon the

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1 testimony that we just heard now.

2 JUDGE BARRETT: I'm sorry, do you --

3 JUDGE STRICKLER: What's the legal  
4 basis?

5 JUDGE BARRETT: Yes, what's the legal  
6 basis of that? I'm sorry?

7 MR. BOYDSTON: The legal basis of that  
8 is that it's become clear that they did not  
9 produce all electronic records in their  
10 possession as Judge Strickler read from the  
11 Order. Instead they read -- they produced a  
12 document they created therefrom. And on that  
13 basis, I just want to make the objection.

14 JUDGE BARRETT: Overruled. That is  
15 not the -- that is not the state of the facts.  
16 Go ahead.

17 MS. PLOVNICK: Okay, Ms. Saunders, I  
18 have -- I don't have any further redirect  
19 questions right now. I don't know if the Judges  
20 have any questions for Ms. Saunders.

21 MR. BOYDSTON: Your Honor, I have just  
22 two -- well, three questions and I will keep it



1 at three.

2 JUDGE BARRETT: Okay.

3 RECROSS EXAMINATION

4 MR. BOYDSTON: First of all with  
5 regard to the database that we've been  
6 discussing, in response to earlier questions, --

7 JUDGE BARRETT: Let's not -- let's are  
8 we -- go ahead Mr. Boydston. The database that  
9 is really a spreadsheet that we've been  
10 discussing?

11 MR. BOYDSTON: Your Honor, I'm sorry,  
12 I'll call it Henry if it makes people happy.

13 The spreadsheet that was prepared in  
14 response to the July 30 Order. Previously you  
15 said your knowledge about how it was prepared was  
16 limited. In response to a question by Ms.  
17 Plovnick, you mentioned handwritten notes and the  
18 difficulty of dealing with handwritten notes.

19 What handwritten notes are you  
20 referring to?

21 MS. SAUNDERS: The lining -- lining  
22 out -- the lining out. We can't indicate what

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1 titles were offered and that the claimants  
2 rejected.

3 BY MR. BOYDSTON:

4 Q In other -- when you say lining out,  
5 lining out the --

6 A The title.

7 Q The title on the certifications?

8 A Yes. Yes. On the reports that are  
9 attached to the certification form, yes.

10 Q Right. But your testimony is that  
11 there may have been difficulty in faithfully  
12 reproducing that in the spreadsheet?

13 A Well, we would not -- I don't --

14 Q Or accurately doing it?

15 A Well we -- we -- I supposed we could  
16 have encoded titles and then shown that they were  
17 lined out. We did not do that.

18 Q I see.

19 A But you had the certification forms  
20 themselves.

21 Q With regard to questions about  
22 mistakes happening, and you said they happen

1 sometimes, which is really understandable. How  
2 many times has the MPAA asked one of its  
3 claimants to return money based upon a mistake?

4 A I do not recall. But more than once.

5 Q Did the MPAA ask -- has the MPAA ever  
6 asked Litton Syndication, Inc. to return money?

7 A I do not know the answer to that Mr.  
8 Boydston.

9 MR. BOYDSTON: Thank you.

10 REDIRECT EXAMINATION

11 MS. PLOVNICK: I have one more  
12 question. Ms. Saunders, were -- and I can -- let  
13 me go over here to.

14 JUDGE BARRETT: That's okay.

15 MS. PLOVNICK: And now we're near the  
16 mic.

17 You testified that there was an effort  
18 to -- for the Excel spreadsheet to be accurate.  
19 That included capturing the information that  
20 might not have been in the form of a strikeout,  
21 but it included an effort to capture that  
22 information in the spreadsheet, isn't that right?

1 MS. SAUNDERS: Yes.

2 MS. PLOVNICK: So it should -- it was  
3 inev -- so I just wanted -- so your testimony  
4 hasn't changed in any way from when I asked you  
5 the question?

6 MS. SAUNDERS: No. I'm trying to say  
7 the same thing throughout.

8 MS. PLOVNICK: Okay. Thank you. And  
9 I have no further questions.

10 JUDGE BARRETT: May this witness be  
11 excused?

12 MR. BOYDSTON: Yes, Your Honor.

13 MR. MacLEAN: Yes, Your Honor.

14 JUDGE BARRETT: Thank you Ms.  
15 Saunders. And safe travels.

16 MS. SAUNDERS: Thank you.

17 JUDGE BARRETT: We're at recess until  
18 1:30. We earned three extra minutes.

19 MR. MacLEAN: Your Honor, may I  
20 inquire as to a time estimate for our afternoon  
21 session?

22 JUDGE BARRETT: By an estimate you

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1 mean Mr. Boydston I presume is going to resume --  
2 oh, Mr. Olaniran is going to.

3 MR. OLANIRAN: I will resume his cross  
4 examination.

5 JUDGE BARRETT: Resume cross  
6 examination of Mr. Galaz. And why don't you just  
7 get together.

8 MR. MacLEAN: I will, thank you, Your  
9 Honor.

10 (Whereupon, the above-entitled matter  
11 went off the record at 12:26 p.m. and resumed at  
12 1:30 p.m.)

13 JUDGE BARRETT: Good afternoon.  
14 Please be seated.

15 Mr. MacLean?

16 MR. MACLEAN: Your Honor, you're  
17 probably surprised to see me here.

18 Over the lunch break and, of course,  
19 is subject to the Board's approval, the SDC have  
20 a witness here who came at the Court's request at  
21 10:30 this morning, Walter Kowalski.

22 And the parties have very graciously

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1       agreed, since we already on an interruption of  
2       Mr. Kowalski's testimony, that we may continue  
3       that interruption and present Mr. Kowalski with  
4       the Board's permission.

5               JUDGE BARRETT: We're not, what's the  
6       word I'm searching for, omniscient, but we can  
7       figure out who's testimony is which when we look  
8       carefully at the transcript. So, I think we'll  
9       be able to do that. Thank you, Mr. MacLean.

10              MR. MACLEAN: Thank you, Your Honor.

11              The settlement devotional claim is  
12       called Walter Kowalski.

13              MR. BOYDSTON: Your Honor, before Mr.  
14       Kowalski makes his way up there, I'd like to  
15       object on the grounds of relevance and ask Mr.  
16       MacLean to provide an offer of proof.

17              I'd rather explain what I'm talking  
18       about or wait for the offer of proof and then  
19       explain it.

20              JUDGE BARRETT: The objection is  
21       relevance?

22              MR. BOYDSTON: Yes.

1 JUDGE BARRETT: Of this witness's  
2 testimony?

3 MR. BOYDSTON: Yes.

4 MR. MACLEAN: Your Honor, I'm very  
5 happy to explain and I'm also happy to offer Mr.  
6 Kowalski is in the room and if you'd like to have  
7 this discussion outside of the presence of the  
8 witness, that would be fine with me.

9 JUDGE BARRETT: I think that makes  
10 sense. Mr. Kowalski, could you just attend  
11 outside there and we'll call you.

12 Is this the Declarant who I said I'd  
13 like his declaration because it started out I am  
14 70?

15 MR. MACLEAN: It is not, Your Honor.

16 JUDGE BARRETT: Oh, okay.

17 MR. MACLEAN: It is not.

18 JUDGE BARRETT: I didn't want to  
19 indicate any bias.

20 MR. MACLEAN: So, Your Honor,  
21 actually, in terms of a proffer, I would proffer  
22 SDC Exhibits 602 would be Mr. Kowalski's

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1 declaration.

2 Because Mr. Kowalski is here, I simply  
3 intend to call him to the stand. But, his  
4 declaration reflects what he would say.

5 Mr. Kowalski will testify as to yet  
6 another fraudulent claim made by IPG, this time  
7 for the years 2004 through 2009 in this  
8 proceeding, by in this proceeding, I mean on the  
9 claim, on the joint claims that are issue in this  
10 proceeding.

11 JUDGE STRICKLER: You're referring to  
12 the cable claims not satellite?

13 MR. MACLEAN: Cable and satellite.

14 JUDGE STRICKLER: You're saying  
15 there's a fraudulent claim in both separate  
16 proceedings?

17 MR. MACLEAN: Yes.

18 JUDGE STRICKLER: Okay.

19 MR. MACLEAN: Fraudulent claims made  
20 on behalf of Bob Ross, Inc. by IPG in their cable  
21 claims and satellite claims for 2004 through  
22 2009.



1                   And I'm sorry, Judge, now I realize  
2                   why you're asking that question.

3                   Mr. Kowalski will testify that he did  
4                   authorize IPG to file claims on behalf Bob Ross,  
5                   Inc. for the years 2001, 2002 and 2003.

6                   Those authorizations were never  
7                   extended. There was never any extension  
8                   agreement.

9                   In 2004, Mr. Kowalski, instead  
10                  authorized All Global Media to represent him for  
11                  his company, Bob Ross, Inc., for future years.

12                  From that time forward, All Global  
13                  Media filed claims on behalf of Bob Ross, Inc.  
14                  for every going forward.

15                  IPG, never checking with Bob Ross,  
16                  Inc. to find whether there was an authorization  
17                  to proceed, having nothing more than the single  
18                  year authorizations that they had from Bob Ross,  
19                  Inc., continued filing claims on behalf of Bob  
20                  Ross, Inc.

21                  In September of -- I'm sorry, in late  
22                  2013, Bob Ross, Inc. became aware that PBS had

1 made a distribution of royalties and became aware  
2 through inquiries with PBS that the distribution  
3 had been made to IPG.

4 He called IPG demanding, (a) his money  
5 and (b) why is IPG filing claims on behalf of Bob  
6 Ross, Inc. when All Global Media is the  
7 authorized agent?

8 IPG gave him the runaround, we have  
9 the correspondence in the record. IPG ultimately  
10 sent him a check minus a large fee which Bob  
11 Ross, Inc. refused and returned to IPG on the  
12 grounds that they were not his authorized  
13 representative.

14 Subsequent to all of that, IPG filed  
15 another claim on behalf of Bob Ross, Inc. for the  
16 cable and satellite royalties in 2013.

17 So, this testimony will be relevant on  
18 the following grounds, several grounds, actually.

19 First, we have a claim in this  
20 proceeding to disqualify IPG as an agent. We're  
21 not claiming they're -- we're not seeking  
22 disqualified valid IPG Claimants who were shown

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1 to be valid but IPG's qualifications to continue  
2 as agent at this proceeding are relevant.

3 We raise this challenge, in fact, this  
4 exact relevance objection was raised in the 1999  
5 proceedings which respect to Tracee Production.

6 IPG argued there -- well, Tracee  
7 Production -- we're not proceeding with our claim  
8 for Tracee Productions in this proceeding,  
9 therefore, it's irrelevant that we file the  
10 fraudulent claim on their behalf.

11 This Court rejected that challenge and  
12 I submit that this is an indistinguishable  
13 situation and this Court, in its claims decision  
14 in 1999, found as follows.

15 In this proceeding, this was with  
16 respect to Tracee Productions, the undisputed  
17 evidence revealed that IPG also filed a claim on  
18 behalf of Tracee Productions.

19 However, Mr. Galaz testified that  
20 IPG's filing of a claim for Tracee Productions in  
21 this proceeding was not improper and that IPG  
22 never pursued the claim.

1 Further down, the Judges do not find  
2 Mr. Galaz's testimony in this regard to be  
3 credible and then addressed the testimony and in  
4 the final paragraph of that section, the Board  
5 said, IPG's decision not to pursue the Tracee  
6 Productions claim in this proceeding does not  
7 excuse the original misconduct nor does it  
8 obviate the damage done to the integrity of the  
9 distribution process in this proceeding.

10 The question before the Judges then is  
11 whether this misconduct compels the Judge to take  
12 any of the extraordinary actions urged on them by  
13 the SDC as a remedy.

14 The Judges conclude that under the  
15 current circumstances, it does not.

16 Further along, the Judges, in  
17 explaining this decision said, the Judges find it  
18 unnecessary to impose additional sanctions on  
19 IPG. Of course, should the Judges be presented  
20 with evidence of any new misconduct by Mr. Galaz  
21 or IPG or any other participant, for that matter,  
22 the Judges will not hesitate to revisit the

1 issue.

2 Although the Judges have decided not  
3 to impose the draconian and punitive measures  
4 requested by SDC, and here, Your Honor, I would  
5 disagree that the measures we're seeking are  
6 neither draconian or punitive.

7 JUDGE STRICKER: We said and punitive.

8 MR. MACLEAN: Well, then I would  
9 disagree with that, respectfully disagree with  
10 that, as well. The measures that we are seeking  
11 are for the protection of the public and the  
12 participants before these proceedings, not to  
13 punish IPG.

14 The Judges nonetheless conclude that  
15 the wrongful actions of Mr. Galaz and IPG  
16 necessitate the application of evidentiary  
17 burdens and presumptions in this proceeding that  
18 take into account those wrongful actions and  
19 that's the second place that's irrelevant to  
20 this, whether IPG's claims are entitled to a  
21 presumption of validity.

22 Moreover, Mr. Kowalski's testimony is

1 relevant to specific claims that we are making  
2 with respect to specific claimants in this  
3 proceeding.

4 Most notably, we are challenging the  
5 claims of Salem Baptist Church, Willie Wilson  
6 Productions, Jack Van Impe, Creflo Dollar, Benny  
7 Hinn and Eagle Mountain -- Eagle Mountain is  
8 Kenneth Copeland Ministries, on the basis -- on  
9 the grounds that from 2004 and, for some of them,  
10 2004 and beyond, there are claims made by both  
11 IPG and All Global Media, the same agent who Bob  
12 Ross, Inc. authorized.

13 All Global Media's claims are entitled  
14 to a presumption of validity, unlike IPG's  
15 claims, in our submission and, therefore, Mr.  
16 Kowalski's testimony is also relevant to the  
17 question of the assumption of authority by All  
18 Global Media over the claims that All Global  
19 Media, the former IPG claimants, that from 2004  
20 an on began to be claimed by All Global Media.

21 On all those bases, Mr. Kowalski's  
22 testimony is relevant.

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1 JUDGE BARRETT: I just missed one step  
2 in your explication, Mr. MacLean. You indicated  
3 that Mr. Kowalski or someone at Bob Ross, Inc. or  
4 Bob Ross Media contacted PBS seeking a  
5 distribution and yet, All Global Media was the  
6 entity filing the claim.

7 MR. MACLEAN: So, as I understand it,  
8 and it may be necessary, actually, I'm not  
9 certain to what extent Mr. Kowalski will be able  
10 to testify to this, but similar to the fact that  
11 MPAA has agents who represent claimants, PBS has  
12 agents who represent claimants.

13 So, as I understand it, both All  
14 Global Media and IPG have made claims to PBS for  
15 distributions on behalf of Bob Ross, Inc.

16 But the claims themselves, that is to  
17 say the claim forms, and with respect to All  
18 Global Media, these are SDC -- one moment please  
19 -- SDC Exhibit 610 are All Global Media's claim  
20 forms which I would move into evidence at this  
21 time.

22 JUDGE BARRETT: Okay. Anything

1 further, Mr. Boydston?

2 MR. BOYDSTON: Yes, Your Honor.

3 This is really nothing more than a  
4 character attack on IPG by a party that has no  
5 interest in this proceeding.

6 Bob Ross, Inc., IPG had contracts with  
7 Bob Ross, Inc. and continued to make application  
8 for Bob Ross, Inc. for a period of about ten  
9 years and accounted to Bob Ross, Inc., paid Bob  
10 Ross, Inc., Bob Ross, Inc. cashed checks for  
11 royalty proceeds for ten years, all up until it  
12 was actually early 2013.

13 Those all came through the Public  
14 Broadcasting Phase I category, never through this  
15 category and never through the program suppliers  
16 category.

17 Bob Ross, Inc. was never included in  
18 IPG's written direct statement for these  
19 proceedings. The only reason why Bob Ross, Inc.  
20 was on the applications was, I beg your pardon,  
21 Your Honor, was because -- Sorry about that.  
22 Was because of claims it had through the Public

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1 Broadcasting Phase I Category and there was, at  
2 least theoretically, a possibility it might have  
3 been broadcast on Canadian Public Television, it  
4 wasn't, but there was a possibility, so had it  
5 been, that would have program suppliers category,  
6 but it has never occurred.

7 So, this has nothing to do with this  
8 category. This is no different than if IPG had a  
9 dispute with its landlord and the SDC and its  
10 efforts went and found the landlord and brought  
11 the landlord in to say, IPG, they are fraudulent  
12 and they're bad actors because they haven't paid  
13 me their rent. It's no different than that  
14 because Bob Ross, Inc. has no claims here, has  
15 never had any claims in either of these  
16 categories and, therefore, it is irrelevant.

17 As to many of the things that were  
18 said, I'll have my chance to respond in argument  
19 if we go forward on this, but I would just say  
20 that the claims of fraud are completely  
21 unfounded. This s a dispute that arose, frankly,  
22 because Bob Ross, Inc. demanded that IPG hand

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1 over 100 percent of what IPG collected for this  
2 one particular period of 2008.

3 For the years prior, IPG accounted to  
4 Bob Ross, Inc. Bob Ross, Inc. took the money  
5 happily, never said boo, never said we terminated  
6 with you, never said anything about All Global  
7 Media.

8 I'd also point out All Global Media  
9 has never filed an intent to participate in this  
10 proceeding or any others and while it's certainly  
11 possible that All Global Media and Bob Ross, Inc.  
12 may have signed a contract, we were never privy  
13 to it.

14 And year in, year out, we made claims  
15 on their behalf and we handed them over their  
16 money and they didn't complain.

17 JUDGE BARRETT: The objection's  
18 overruled. The SDC has made certain claims and  
19 in its case-in-chief, this is one of the pieces  
20 of evidence that the SDC is offering in support  
21 of those claims.

22 It's subject to cross examination,

1 it's subject to rebuttal, it's subject to  
2 controversion in whatever form and so, we'll hear  
3 from Mr. Kowalski.

4 MR. BOYDSTON: Thank you, Your Honor.

5 MR. MACLEAN: Thank you, Your Honor.

6 The Settling Devotional Claimants call  
7 Walter Kowalski.

8 Oh, and, Your Honor, I did offer SDC  
9 Exhibit 610 into evidence and I don't believe  
10 there was a ruling.

11 JUDGE BARRETT: You did and I don't  
12 know that we had a chance to focus on that yet.

13 So, before you sit, please raise your  
14 right hand?

15 Do you solemnly swear or affirm that  
16 the testimony you give in these proceedings shall  
17 be the truth, the whole truth and nothing but the  
18 truth?

19 MR. KOWALSKI: I do.

20 JUDGE BARRETT: Please be seated.

21 Any objection to the admission of  
22 Exhibit 610?

1 MR. BOYDSTON: No, Your Honor, no  
2 objection.

3 MS. PLOVNICK: No objection.

4 JUDGE BARRETT: 610 is admitted.

5 (Whereupon, the above-referred to  
6 document was received into evidence as  
7 SDC 610.)

8 MR. MACLEAN: Thank you, Your Honor.

9 WHEREUPON,

10 WALTER KOWALSKI

11 was called as a witness for the Claimant and,  
12 having been first duly sworn, assumed the witness  
13 stand, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MACLEAN:

16 Q Good afternoon, Mr. Kowalski.

17 A Good afternoon.

18 Q As you know, I'm Matthew MacLean, I  
19 represent the Settling Devotional Claimants.

20 A Right.

21 Q Could you please, first of all, spell  
22 your name and introduce yourself to the Judges?

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1           A       Okay.       I'm     Walter     Kowalski,  
2           K-O-W-A-L-S-K-I.   I am President of Bob Ross,  
3           Incorporated, a company we deal in instruction of  
4           painting, a particular technique of painting.

5                     We have our own production of TV  
6           programs, DVDs, videos.   We publish about 40  
7           books and we have thousands of instructors who  
8           have been certified to teach this particular  
9           method of painting here in the U.S. and around  
10          the world.

11          Q       Thank you, thank you, sir.

12                     Have you ever testified in any kind of  
13          proceeding before?

14          A       No, this is the first time.

15          Q       And could you please give the Judges  
16          a sense of your professional and educational  
17          background prior to becoming associated with Bob  
18          Ross, Inc.?

19          A       I'm a retired Federal Employee. I was  
20          with the CIA for about 30 years and I was also  
21          engaging in a couple of other entrepreneurial  
22          activities.

1 I owned and managed the food  
2 concessions at a racetrack in Southern Maryland.  
3 And then through my wife's exposure to Bob Ross,  
4 I became involved in that.

5 Q Can you tell the Judges about how that  
6 came about?

7 A We had lost our son in an automobile  
8 accident and my wife was quite depressed, but  
9 she's the artist in the family. And she was  
10 eager for a break loose from that depression and  
11 she asked if she could attend a class by this  
12 rather obscure artist in Clearwater, Florida.

13 So, I agreed. I took time from work  
14 and I did some deep sea fishing while she was  
15 attending the class.

16 But each evening she would come out of  
17 there and said, you know, there's something going  
18 on. There's a rapport that Bob has with his  
19 students is something very unique.

20 And so, by the end of the five day  
21 course, we approached Bob Ross and my wife said,  
22 you know, we've got to do something with you,

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1 would you agree? And Bob was one year away from  
2 retiring from the Air Force and so, that was sort  
3 of the genesis of the whole thing.

4 It was my wife's own sort of view of  
5 this Bob Ross person and who has now become  
6 somewhat of a guru or quite a celebrity.

7 Q And about what time was that? When  
8 did that happen?

9 A In 1980 roughly we began holding  
10 class. Bob Ross, the first activity we engaged  
11 in was just managing Bob's teaching activities  
12 around the U.S., in different parts of the U.S.

13 I functioned as sort of the advanced  
14 man to set up the classes and so we swung the  
15 East Coast and back down to Florida again. So,  
16 it was a case of demonstrations in the shopping  
17 malls and TV ads and so forth.

18 Television itself was not in the  
19 picture at that time. So, about 1982, we were  
20 duplicating some commercial tapes at a local PBS  
21 station in Falls Church and the manager happened  
22 by and saw the footage of Bob doing this rather

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1 quick technique of painting and suggested that we  
2 should have a TV series. And that was the  
3 beginning of that.

4 So, it was 1982, our first offering  
5 was -- we reached about 50 stations and then from  
6 then on, it sort of exponentially grew until we  
7 reached just about 90 percent of all public  
8 television channels.

9 Q And were you always the president of  
10 Bob Ross, Inc.?

11 A I was always the logistics  
12 administrator of this. My wife was the artistic  
13 side and closely working with Bob and she was on  
14 the road with Bob most of the time.

15 Q Today, who is the owner of Bob Ross,  
16 Inc.?

17 A My daughter has inherited it. We've  
18 signed all of the ownership to my daughter who's  
19 been involved in the company for quite some time.

20 Q Prior to -- and Bob Ross, Inc. has  
21 syndicated television programs?

22 A Yes, we refresh those and they've been



1 sort of restructured and reprogrammed and, you  
2 know, we've been on the air continuously  
3 uninterrupted since 1982 in one form or another.

4 Q What is the name of the program?

5 A Currently, it's called the Best of the  
6 Joy of Painting.

7 Q And what was it before?

8 A It began as simply The Joy of Painting  
9 with Bob Ross.

10 Q What's the program about?

11 A It's art instruction. It teaches you  
12 a very quick method of painting through the use  
13 of particular brushes and pallet knives, et  
14 cetera. And that's the sort of appeal, it's a  
15 quick method. Bob does an entire landscape  
16 painting in 30 minutes on TV, so that's the  
17 excitement begins there.

18 Q Prior to 2001, or prior to really  
19 2002, for the year 2001, did Bob Ross, Inc. every  
20 make any claims to the copyright office for  
21 copyright royalties?

22 A Unilaterally?

1 Q Yes.

2 A No.

3 Q And why is that?

4 A I don't know that we really knew about  
5 it, to be honest. The first time we heard it was  
6 when we were approached by IPG.

7 Q And so --

8 A A representative.

9 Q That was what I was about ask you.  
10 Tell the Judges about that.

11 A For the claim year 2001, I signed a --  
12 I executed a mandated agreement with Marina  
13 Oshita of IPG.

14 Q How did that come about?

15 A Just out of the air. I got a piece of  
16 correspondence in the mail one day and I had my  
17 lawyer review the agreement and he approved.

18 At that time, I researched to find out  
19 what the royalty was all about and decided to go  
20 ahead.

21 Q In front of you at the witness stand  
22 there you'll see a binder open to SFC Exhibit

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1 602. Do you see that?

2 A 602?

3 Q It should be already open.

4 A Oh, okay, yes.

5 Q If you could flip through and take a  
6 look at that and tell me if you recognize SDC  
7 Exhibit 602?

8 A Yes.

9 Q And what is SDC --

10 A It's my declaration.

11 Q And then if you turn to Attachment --  
12 there are attachments to this declaration, turn  
13 to Attachment A of SDC Exhibit 602.

14 A Right.

15 Q Can you take a look at that, it's a  
16 two page document, could you take a look at that  
17 and tell us what that is?

18 A That was the -- there's the cover  
19 letter transmitting the mandate agreement for the  
20 cable year 2001.

21 Q And taking a look at the bottom of the  
22 mandate agreement under the line Bob Ross, Inc.

1       agreed and accepted Bob Ross, Inc. Is that your  
2       signature there?

3             A       It is, yes.

4             Q       So, you signed this mandate agreement  
5       with IPG for the year 2001, is that right?

6             A       Right, I did.

7             Q       What did you understand you were doing  
8       when you signed this mandate agreement?

9             A       I was just giving IPG the right to  
10       collect the royal monies on by behalf for the  
11       year 2001.

12            Q       After signing this mandate agreement,  
13       did you -- well, let me ask you this. What did  
14       you -- after signing the mandate agreement, what  
15       did you understand was to happen?

16            A       I understood that it would be a number  
17       of years forthcoming before any monies would be  
18       collected. So, I signed it and really just sort  
19       of waited for a number of years before any monies  
20       were produced.

21            Q       Did you have any further  
22       communications with Ms. Oshita after signing this

1 initial mandate agreement?

2 A No, I think probably the next one  
3 would have been for the year 2002.

4 Q So, taking a look at Attachment B to  
5 your declaration, can you look at that  
6 attachment? It's another two page document.

7 A Attachment A?

8 JUDGE BARRETT: I think he said B as  
9 in boy.

10 MR. KOWALSKI: Oh, B, okay.

11 MR. MACLEAN: And actually, Your  
12 Honor, first I'd like to move to admit Attachment  
13 A to SDC 602.

14 MR. BOYDSTON: No, objection.

15 JUDGE BARRETT: Attachment A to 602 is  
16 admitted.

17 (Whereupon, the above-referred to  
18 document was admitted into evidence as  
19 SDC 602 Attachment A.)

20 MR. MACLEAN: Mr. Kowalski, if you'd  
21 take a look at Attachment B to SDC 602 and tell  
22 the Judges what this is?

1 MR. KOWALSKI: It's a cover letter  
2 asking that I sign -- that I execute another  
3 mandate agreement for year 2002.

4 BY MR. MACLEAN:

5 Q And did you execute this mandate  
6 agreement for year 2002?

7 A I did, yes.

8 Q In between the execution of these two  
9 mandate agreements, did you have any meetings or  
10 phone conversations or with Marion Oshita?

11 A No, not really.

12 Q So, you just got --

13 A None that I can recall, no.

14 Q So, you just got another letter in the  
15 mail asking you to sign the next mandate  
16 agreement?

17 A Correct, yes.

18 MR. MACLEAN: If you could turn to  
19 Attachments -- oh, and Your Honor, I move to  
20 admit Attachment B to SDC 602.

21 MR. BOYDSTON: No objection.

22 JUDGE STRICKLER: That's both the July

1 31st letter and the mandate agreement?

2 MR. MACLEAN: Yes, Your Honor.

3 JUDGE BARRETT: No objection from  
4 MPAA?

5 MR. OLANIRAN: No objection, Your  
6 Honor.

7 JUDGE BARRETT: Attachment B is  
8 admitted.

9 (Whereupon, the above-referred to  
10 document was admitted into evidence as  
11 SDC 602 Attachment B.)

12 MR. MACLEAN: Sir, if you could to  
13 Attachment C to SDC 602?

14 MR. KOWALSKI: Yes? Okay.

15 BY MR. MACLEAN:

16 Q Could you tell the Judges what  
17 Attachment C is?

18 A It's another cover letter and the  
19 attached mandate agreement for year 2003. And  
20 that is my signature and I did approve.

21 Q Between your signing the mandate  
22 agreement for 2002 and the signing of the mandate

1 agreement for 2003, did you have any telephone  
2 conversations or meetings with Marion Oshita?

3 A No.

4 Q During this entire time frame in which  
5 you signed these three mandate agreements, did  
6 you ever have any communications at all with Raul  
7 Galaz?

8 A No, it's not a name that was know to  
9 me at that time.

10 Q Did you have any communications in  
11 that time frame with Denise Vernon?

12 A No.

13 Q Is there a name that was familiar to  
14 you?

15 A It's a name that became familiar to me  
16 in the latter stages of 2012.

17 Q In the time frame in which these  
18 mandate agreements were signed, did you have any  
19 communications with Lisa Galaz?

20 A No.

21 Q Is that a name that would have been  
22 familiar to you at that time?



1 A No.

2 MR. MACLEAN: Your Honor, I move  
3 Exhibit C to SDC 602 into evidence.

4 MR. BOYDSTON: No objection.

5 MR. OLANIRAN: No objection.

6 JUDGE BARRETT: Attachment C's  
7 admitted.

8 (Whereupon, the above-referred to  
9 document was admitted into evidence as  
10 SDC 602 Attachment C.)

11 MR. MACLEAN: If you could take a look  
12 at Attachment D? Could you tell the Judges what  
13 Attachment D is?

14 MR. KOWALSKI: This is a fax cover  
15 sending to me this -- a secondary rights  
16 agreement to the executed -- and I think I did,  
17 and then not having received a copy with Marion  
18 Oshita's signature, I did send it back to her  
19 asking her to countersign.

20 BY MR. MACLEAN:

21 Q And then this is the reply from Marion  
22 Oshita?

1           A       And this is the reply. I think there  
2 was a delay in getting the fax to go. I think  
3 the fax number wasn't effective or something.

4                    Anyway, it was faxed back to her and  
5 then she in turn did return it with her  
6 signature.

7           Q       And this is that fax that Ms. Oshita  
8 returned to you?

9           A       Correct.

10                   MR. MACLEAN: How did it come about  
11 that you signed this --

12                   Well, first of all, Your Honor, I move  
13 Attachment D to Exhibit SDC 602 into evidence.

14                   MR. BOYDSTON: No objection.

15                   ME. OLANIRAN: No objection, Your  
16 Honor.

17                   JUDGE BARRETT: Attachment D is  
18 admitted.

19                   (Whereupon, the above-referred to  
20 document was admitted into evidence as  
21 SDC 602 Attachment D.)

22                   MR. MACLEAN: How did it come about

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1 that you signed this secondary rights agreement  
2 in Attachment D?

3 MR. KOWALSKI: I think, again, mainly  
4 I think I accepted it mainly because the same  
5 party involved, Marion Oshita, whom I took to be  
6 probably the principle in all of the, you know,  
7 in all of the exchanges with me up until now.

8 I assumed that she was the principle  
9 party and that she's now offering me an  
10 alternative plan for ongoing payment of  
11 royalties, collection and payment of royalties  
12 with a minimum of one year. I think the contract  
13 says that there would be a minimum of at least  
14 one year beginning with the year 2004. I don't  
15 know if that's in the document or not.

16 But that was my understanding it would  
17 be for the beginning year 2004 royalties.

18 Q Did you note at the time you signed  
19 the secondary rights agreement that it was of a  
20 different form and with a different named entity  
21 than the mandate agreements that you've been  
22 signing earlier?

1           A       I did notice that it was All Global  
2 Media but I just thought it was another  
3 reconstruction of what had been taking -- again,  
4 because of the principle involved, Marion Oshita,  
5 was making a new offer to me which I agreed to.

6           Q       And how did you understand this  
7 secondary rights agreement to differ with respect  
8 to its terms from the mandate agreements that  
9 you'd signed earlier?

10          A       Well, the main difference is that it  
11 was ongoing and it could be terminated by me at  
12 any time. But that it would be ongoing for years  
13 2004 thereafter.

14          Q       Did you ever sign a continuing or  
15 ongoing agreement with IPG?

16          A       No.

17          Q       After your signing the secondary  
18 rights agreement at Attachment D, did you ever  
19 sign any further agreements with IPG at all?

20          A       No.

21          Q       Did there come a time when Bob Ross,  
22 Inc. began receiving payments of copyright

1 royalties?

2 A I think it would be years around 2005  
3 there were some royalties being paid, yes.

4 Q Did you note at the time where those  
5 royalties were being paid from?

6 A I'd probably say in retrospect, but at  
7 the time, I probably would have just forwarded the  
8 check on to my accountant for deposit.

9 I'm not sure I was noting -- well, I  
10 know what you're saying, it was coming from  
11 Worldwide Subsidy Group and I think my reaction  
12 probably was that, well, it's just a mechanism  
13 for payment of royalties of some particular  
14 account.

15 I had not connected IPG with Worldwide  
16 Subsidies up until that time.

17 Q Did you have any understanding who  
18 Worldwide Subsidy Group was?

19 A No.

20 Q Did you also receive for some years,  
21 checks from All Global Media?

22 A Yes, for the years 2004, 2005 and

1 2006. There were royalties received for those  
2 years from All Global Media, checks drawn from  
3 All Global Media.

4 Q Did you receive any checks from either  
5 IPG or Worldwide Subsidy Group for those years  
6 2004, 2005 and 2006?

7 A No.

8 Q Did you receive a royalty check for  
9 the year 2007?

10 A I'm trying to recall.

11 Q You don't have to guess if you don't  
12 know the answer.

13 A Okay. Yes, I think I did, yes. Yes,  
14 I think I received for 2007.

15 Q Do you know what entity that check  
16 came from?

17 A Yes, I do now. It was from Worldwide  
18 Subsidy Group.

19 Q When you received that check, did you  
20 know what Worldwide Subsidy Group was?

21 A I'd have to know when that check was  
22 received. I'm not -- and I don't recall when it

1 was if -- let me answer your question this way.

2 It was about in 2012 that I began to  
3 see this as a more curious thing than I had up  
4 until now because now, I'm receiving checks with  
5 cover letters from Worldwide Subsidy Group for  
6 years that I had contracted -- I thought I had  
7 contracted with All Global.

8 Q So, so --

9 A So, in about 2012, I started having my  
10 own questions, I think. In other words, up until  
11 then, I had sort of operated on this presumption  
12 that it was Marion Oshita until I signed a new  
13 secondary agreement with her, but it was always  
14 Marion Oshita.

15 But in those later years, about  
16 2011/2012, I began to wonder and thought I should  
17 look into this, but I never did.

18 Q Well, did there come a time when you  
19 became aware of a distribution having been made  
20 for the royalty year 2008?

21 A Can you state that question again?

22 Q Did there come a time when you became

1 aware of a distribution by PBS made for royalty  
2 year 2008?

3 A I first became aware of the fact that  
4 there were some questionable activities relative  
5 to the payment of royalties.

6 I first heard about that from my  
7 daughter who had attended a PBS event on the West  
8 Coast and she came back and said that there were  
9 rumblings of this sort that there were  
10 irregularities of payment of royalties.

11 And so, it was at that time that I  
12 went to PBS and asked about who was entitled to  
13 the next payment? And they told me that it was  
14 -- had been assigned to Worldwide Subsidy Group.

15 And so that was the first time that I  
16 understood that they had directly made the claim  
17 for my behalf.

18 Q What did you do after that?

19 A I engaged legal counsel for one.

20 Q If you could take a look at Attachment  
21 E to SDC Exhibit 602. Could you tell the Judges  
22 what Attachment E is?

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1           A       Attachment E, yes. I have it and  
2       that's my letter to Mr. Boydston.

3           MR. MACLEAN: Your Honor, I move  
4       Attachment E to SDC 602 into evidence.

5           MR. BOYDSTON: No objection.

6           MR. OLANIRAN: No objection, Your  
7       Honor.

8           JUDGE BARRETT: Attachment E is  
9       admitted. And according to my notes, Mr.  
10      MacLean, Attachment F was admitted earlier.

11                (Whereupon, the above-referred to  
12      document was admitted into evidence as  
13      SDC 602 Attachment E.)

14           MR. MACLEAN: Thank you, Your Honor.  
15      And, Your Honor, just to make 100 percent sure,  
16      did I move for admission of Attachment D?

17           JUDGE BARRETT: I believe so.

18           MR. MACLEAN: Okay, thank you.

19                So, taking a look at Attachment E,  
20      what prompted you or what motivated you to write  
21      this letter to Mr. Boydston?

22           MR. KOWALSKI: Well, I had to tell him

1 that he wasn't entitled to that withdrawal for  
2 those funds. I mean I think what's contained in  
3 this letter.

4 BY MR. MACLEAN:

5 Q And why do you say that Worldwide  
6 Subsidy Group wasn't entitled to these funds?

7 A We had no agreement with them.

8 Q If you'd take a look at Attachment F  
9 of SDC 602 which is already in evidence. Could  
10 you tell the Judges what Attachment F is?

11 A It's an email from Worldwide Subsidy  
12 Group to me.

13 Q I think earlier you testified that you  
14 had not been familiar with the name Denise  
15 Vernon?

16 A No, that -- I guess that would have  
17 been the first such communication I had from her,  
18 yes.

19 Q I'd like you to take at the second  
20 paragraph. It says the response of Bob Ross,  
21 Inc. is unfortunate and requires WSG to perform  
22 various due diligence that would have been much

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1 easier if Bob Ross, Inc. were to have simply  
2 cooperated.

3 Did you ever have any understanding  
4 what Ms. Vernon was referring to here?

5 A No, I have -- that was very confusing  
6 to me. I mean what she meant by having simply  
7 cooperated, I don't know under what terms we  
8 would have done that.

9 Q In the last sentence of that same  
10 paragraph, in all candor, we are perplexed at the  
11 sudden adversarial posture which in its absence  
12 would have resulted in the immediate accounting  
13 to Bob Ross, Inc. of the \$19,503.00 most recently  
14 collected, less WSGs entitlement to retain  
15 \$3,901.00, i.e., hardly a significant amount.

16 Did you have any understanding what  
17 Ms. Vernon meant about WSGs entitlement to retain  
18 \$3,901.00?

19 A Well, I know that, I mean she's saying  
20 that they were entitled to it, but that's not my  
21 understanding because, again, we had no agreement  
22 with Worldwide Subsidy Group.

1           Q     The last sentence says, in any event,  
2     WSG will now have to investigate this matter  
3     further. Once WSG concludes its inquiry, will  
4     act accordingly. If you elect to change your  
5     mind, please feel free to contact me.

6           Are you aware of any investigation or  
7     inquiry that Worldwide Subsidy Group conducted?

8           A     No.

9           Q     If you'd take a look at Attachment G  
10    to SDC 602. What is Attachment G?

11          A     Ted Hammerman is the legal counsel  
12    that I engaged following our discovery.

13          Q     Did --

14          A     I'm reading, I'm sorry, I'm reading  
15    through it right now.

16                It's a request by Mr. Hammerman for  
17    them to return the -- to submit to us the monies  
18    they had collected on behalf of Bob Ross,  
19    Incorporated.

20          Q     The entire amount of the money?

21          A     The entire amount, yes.

22                MR. MACLEAN:   Your Honor, I move

1 Attachment G into -- I'm sorry, Attachment F into  
2 evidence. I'm sorry, that was Attachment G. I  
3 move Attachment G into evidence.

4 MR. BOYDSTON: No objection.

5 JUDGE BARRETT: Attachment G is  
6 admitted.

7 (Whereupon, the above-referred to  
8 document was admitted into evidence as  
9 SDC 602 Attachment G.)

10 MR. MACLEAN: And did IPG or WSG  
11 return the entire \$19,503.66 to Bob Ross, Inc.?

12 MR. KOWALSKI: No.

13 BY MR. MACLEAN:

14 Q If you'd turn to Attachment H. What  
15 is Attachment H?

16 A It's a letter from Worldwide Subsidy  
17 Group with an attachment outlining the breakdown  
18 of the check that was submitted with that letter  
19 and their withdrawal of commission on it.

20 Their fee was collected from it and  
21 that was the check that was received was the  
22 balance of the original amount, plus their claim

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1 for the \$15,602.00. I'm sorry, for their -- I'm  
2 not sure what I'm reading now.

3 Q Well, that's all right, Attachment H  
4 is three pages.

5 A Oh, yes, right, right. It would be  
6 the -- that's right. The net amount was  
7 \$15,602.00 on the check.

8 MR. MACLEAN: Your Honor, I move  
9 Attachment H to SDC 602 into evidence.

10 MR. BOYDSTON: No objection.

11 JUDGE BARRETT: Attachment H is  
12 admitted.

13 (Whereupon, the above-referred to  
14 document was admitted into evidence as  
15 SDC 602 Attachment H.)

16 MR. MACLEAN: If you'd take a look at  
17 Attachment I to SDC 602.

18 MR. KOWALSKI: All right.

19 BY MR. MACLEAN:

20 Q Could you tell the Judges what  
21 Attachment I is?

22 A It's a letter from my lawyer, Mr.

1 Hammerman, to Brian Boydston.

2 Q Did you instruct Mr. Hammerman to send  
3 this letter?

4 A I did.

5 MR. MACLEAN: Your Honor, I move  
6 Attachment I to SDC 602 into evidence.

7 MR. BOYDSTON: No objection.

8 MS. PLOVNICK: No objection.

9 JUDGE BARRETT: Attachment I is  
10 admitted.

11 (Whereupon, the above-referred to  
12 document was admitted into evidence as  
13 SDC 602 Attachment I.)

14 MR. MACLEAN: And what did you  
15 instruct Mr. Hammerman to do with respect to this  
16 letter and the attached check?

17 MR. KOWALSKI: To return the check  
18 that had been sent to us by Worldwide and asking  
19 that they submit the full amount to us.

20 BY MR. MACLEAN:

21 Q And did Bob Ross, Inc. receive the  
22 full amount or any further amount from --

1           A       No,       there       was       no       further  
2       acknowledgment of any of this, no.

3                   JUDGE STRICKLER:   Before you get to  
4       the next document, Mr. Kowalski, the letter from  
5       Mr. Hammerman has three names, cc'd one, of  
6       course, is yourself. The other is Steve Friedman  
7       and Mark Mangum. Do you see that on page 2 of  
8       Attachment I?

9                   MR. KOWALSKI:   Yes, I see that.

10                  JUDGE STRICKLER:   Do you know who  
11       Steve Friedman and Mark Mangum are?

12                  MR. KOWALSKI:   I know that Steve  
13       Friedman is a PBS official. I'm not sure his  
14       full position, but I think he's involved in the  
15       royalty issues, yes.

16                  JUDGE STRICKLER:   Thank you. And Mr.  
17       Mangum?

18                  MR. KOWALSKI:   I don't know that name.

19                  JUDGE STRICKLER:   Thank you.

20                  MR. KOWALSKI:   Okay.

21                  MR. MACLEAN:   If you could take a look  
22       at Attachment J to SDC 602.



1 MR. KOWALSKI: I have it.

2 BY MR. MACLEAN:

3 Q What is Attachment J?

4 A It's a fax from Mr. Hammerman to Brain  
5 Boydston indicating that you've not responded to  
6 our earlier letter and offering a compromise to  
7 sort of resolve this.

8 I think that we held -- I think we  
9 reserved our rights here, but we indicated that  
10 we would, in the interest of the settlement, to  
11 allow them a 20 percent commission and that the  
12 balance should be sent to us.

13 Q If you'd take a look at -- that was  
14 the first page of Attachment J, if you'd take a  
15 look at the page behind the first page, the  
16 second page of Attachment J. Tell the Judges  
17 what these are.

18 A Yes.

19 Q What are these?

20 A Okay, again, just notification that we  
21 have not heard from Worldwide Subsidy Group  
22 regarding the monies that they owed us.

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1 MR. MACLEAN: Your Honor, I move  
2 Attachment J of SDC 602 into evidence.

3 MR. BOYDSTON: No objection.

4 MR. PLOVNICK: No objection.

5 JUDGE BARRETT: Attachment J is  
6 admitted.

7 (Whereupon, the above-referred to  
8 document was admitted into evidence as  
9 SDC 602 Attachment J.)

10 MR. MACLEAN: Did you ever hear back  
11 from IPG or Worldwide Subsidy Group again  
12 regarding your money?

13 MR. KOWALSKI: Not about -- there was  
14 no communication about this, no. No, I think  
15 that was probably the end of the conversation or  
16 communication on this issue.

17 BY MR. MACLEAN:

18 Q Was there ever any correspondence or  
19 communication between Bob Ross, Inc. and WSG or  
20 IPG about filing further claims on behalf of Bob  
21 Ross, Inc.?

22 A Well, there were -- and they're not

1 here and I don't have a total recollection.  
2 There was some correspondence from parties in  
3 Worldwide suggesting some continuation of our  
4 relationship which confused me entirely. And I  
5 don't think they're here.

6 Q Did you authorize --

7 A We never responded to those.

8 Q Did you authorize -- oh, inquires from  
9 IPG relating to your programming and that kind of  
10 thing for making claims on your behalf?

11 A Yes, as though none of this, you know,  
12 like there had never any interruption of this  
13 relationship between IPG, Worldwide and myself.  
14 You know, and I was totally confused by that  
15 because it seemed to me that that party had not  
16 been fully informed of what had transpired.

17 Q Did you --

18 A That they had been Denise Vernon, by  
19 the way. Again, I'm not sure of that.

20 Q Did you ever authorize IPG or WSG to  
21 file any further claims?

22 A No.

1 Q Are you aware that IPG filed a claim  
2 for Bob Ross, Inc. in July of this year for  
3 royalty year 2013?

4 A No, I did not.

5 Q This is the first time you're hearing  
6 that?

7 A The first time I'm hearing that.

8 Q Now, Mr. Kowalski, neither you nor Bob  
9 Ross, Inc. are a party in this hearing today, is  
10 that right?

11 A That's correct.

12 Q Do either you or Bob Ross, Inc. have  
13 any financial stake in the outcome of this  
14 hearing here?

15 A No, I would say that my involvement  
16 here has really nothing to do with any  
17 expectation of any kind of gain out of this. It  
18 is strictly a civic performance on my part.

19 It might sound trite, but I believe in  
20 our legal system and I think this is a  
21 contribution rarely provided to people, to  
22 citizens, and I thought should afford myself of

1 that. .

2 MR. MACLEAN: Thank you. No further  
3 questions.

4 JUDGE BARRETT: Mr. Boydston, before  
5 you cross examine, any questions from MPAA for  
6 Mr. Kowalski?

7 MS. PLOVNICK: No, Your Honor.

8 JUDGE BARRETT: Mr. Boydston?

9 MR. BOYDSTON: I'm happy to proceed,  
10 Your Honor.

11 Can I just note that I'm coming just  
12 after 2:30.

13 JUDGE BARRETT: Yes, since we go until  
14 4:30, I try to hold off on an afternoon break.

15 MR. BOYDSTON: Very well.

16 JUDGE BARRETT: As long as we can  
17 stand it.

18 CROSS EXAMINATION

19 BY MR. BOYDSTON:

20 Q Good afternoon, Mr. Kowalski. I'm  
21 Brian Boydston. We've communicated, but now we  
22 see each other in the flesh.

1           A       Right.

2                   MR. BOYDSTON: I represent Worldwide  
3       Subsidy Group, also known as Independent  
4       Producers Group.

5                   Now, there's a bunch of binders here.  
6       You've been at documents in one. I'd like to  
7       show you some documents that are in another  
8       binder.

9                   Your Honor, my I approach?

10                  JUDGE BARRETT: You may.

11                  MR. BOYDSTON: If I may, I'll put this  
12       on the side and bring a different one.

13                  JUDGE STRICKLER: Mr. Boydston, if  
14       you're directing the witness to exhibits, could  
15       you --

16                  MR. BOYDSTON: I came close, I was  
17       just trying to be of assistance, that's all.

18                  I was going to direct him to Exhibit  
19       53.

20                  Mr. Kowalski, the first page of  
21       Exhibit 53 is a document which has already been  
22       admitted into evidence in the previous exhibit.

1 It's just a copy that we've put in ours.

2 It's a copy of a letter from you to me  
3 dated January 16, 2013. And you've already been  
4 asked about that and I won't really dwell on it  
5 because you've already explained what it was.

6 Let me ask you to take a look at the  
7 second page and that is an email from me to you  
8 dated February 1, 2013.

9 And what follows after that are  
10 several other emails.

11 Your Honor, we can either have -- I  
12 wish to, of course, question the witness on this.  
13 I wish to move this into evidence. Do you want  
14 me to --

15 JUDGE BARRETT: I thought you just  
16 said it had already been admitted into evidence.

17 MR. BOYDSTON: Just page 1. The page  
18 1 is -- we have a copy of that letter both in our  
19 exhibit and the SDC has one in their exhibit.

20 JUDGE BARRETT: I see.

21 MR. BOYDSTON: But then there's all  
22 these emails afterwards and I'm asking for

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1 guidance from the Court of how you want me to --  
2 do you want me to try to have him review all this  
3 and then admit. I know you don't like questions  
4 being of exhibits that are not officially  
5 admitted yet.

6 JUDGE BARRETT: Let me ask counsel to  
7 flip through the remainder of the exhibit and, if  
8 you don't object, then we won't need to belabor  
9 the point.

10 MR. MACLEAN: Your Honor, I object.

11 JUDGE BARRETT: Okay. On the basis  
12 of?

13 MR. MACLEAN: Your Honor, this is a  
14 page 2 of IPG 053 is an email from -- or purposed  
15 to be an email from Mr. Boydston to Mr. Kowalski  
16 referencing an attachment. That attachment is  
17 not included. I object on the grounds of  
18 completeness.

19 However, I have a copy of the  
20 attachment three hold punched.

21 JUDGE BARRETT: How handy. Are you  
22 offering them to augment this exhibit? Do you



1 want to have that marked separately?

2 MR. BOYDSTON: Your Honor, I would  
3 have no objection to the admission of this  
4 exhibit augmented with the attachment referenced.

5 JUDGE BARRETT: Okay.

6 MR. MACLEAN: I have no objection to  
7 that.

8 JUDGE BARRETT: Okay, fine.

9 JUDGE STRICKLER: Do you want to see  
10 it first to make sure it's really --

11 MR. BOYDSTON: I will, but I'm pretty  
12 sure he's telling the truth.

13 JUDGE BARRETT: Okay. We will admit  
14 Exhibit 53 and then we'll have that marked when  
15 you redirect and admit it as augmentation of the  
16 53.

17 MR. MACLEAN: Your Honor, if it could  
18 be admitted as augmentation of 53, I'm not sure I  
19 have any redirect, but I'll decide that later.

20 JUDGE BARRETT: Oh, okay. Right now?  
21 We can do that. I'll ask the --

22 MR. BOYDSTON: Well, Your Honor, can

1 I see it?

2 JUDGE BARRETT: Yes, you may take an  
3 opportunity to look that over and then you will  
4 ask the clerk to simply incorporate that into 53,  
5 presuming Mr. Boydston does not find it  
6 objectionable.

7 MR. BOYDSTON: No, I do not. May we  
8 admit this now with 53 so I can ask questions on  
9 this as well?

10 JUDGE BARRETT: That suit me just  
11 fine.

12 (Whereupon, the above-referred to  
13 document was admitted into evidence as  
14 IPG Exhibit 53.)

15 MR. BOYDSTON: Okay. Should I give a  
16 copy to the clerk to mark it a certain way and  
17 put in the witness copy?

18 JUDGE BARRETT: She can just put a  
19 sticker on it that it's an addition to Exhibit  
20 53.

21 JUDGE STRICKLER: And are we going to  
22 add it directly the Friday, February 1, 2013

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1 email from you to Mr. Kowalski that identifies  
2 the attachment?

3 MR. BOYDSTON: Yes, I think that makes  
4 the most sense.

5 JUDGE STRICKER: It sure seems to,  
6 yes.

7 MR. BOYDSTON: May I go ahead and  
8 insert it in the binder?

9 Your Honor, I believe you did say that  
10 Exhibit 53 is admitted, correct?

11 JUDGE BARRETT: It is admitted as  
12 augmented.

13 MR. BOYDSTON: Yes, thank you, Your  
14 Honor.

15 Okay, Mr. Kowalski, take a look at the  
16 first page of Exhibit -- excuse me, what would be  
17 second page of Exhibit 53, which would be the  
18 page previous to what you're looking at now.

19 My I approach, Your Honor?

20 JUDGE BARRETT: You may.

21 MR. BOYDSTON: And that appears to be  
22 an email from me to you dated February 1st, would

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1       you agree?

2                   MR. KOWALSKI:   Yes.

3                   BY MR. BOYDSTON:

4               Q       And I won't read it, but it refers  
5       right away to an attached list and do you recall  
6       receiving this?

7               A       I do.

8               Q       And the second of the two paragraphs,  
9       it states, in the meantime, I asked in our  
10      telephone call, could you send us all of your  
11      correspondence with WSG and whatever information  
12      you may have about All Global Media's filing of  
13      claims for Bob Ross, Inc.

14                   Now, in response to that email, do you  
15      recall whether or not you provided me or IPG or  
16      WSG, which is actually -- if I may, I'll  
17      represent to you that IPG is a d/b/a of WSG. Are  
18      you familiar with what a d/b/a is?

19              A       Yes.

20              Q       So, if I say IPG or WSG for the  
21      purposes of my questions, they mean the same  
22      entity. Do you understand that?

1           A       Okay, but it depends on how far back  
2       you're going because my understanding would not  
3       have meant your understanding in those earlier  
4       years because I wasn't relating IPG with  
5       Worldwide Subsidy Group.

6           Q       Well, then I won't do that, I'll be  
7       very specific when I ask the questions.

8                   In response to that second paragraph  
9       asking about information about All Global Media,  
10      did you provide any information to myself or to  
11      anyone else?

12          A       No.

13          Q       Is there any reason why you didn't?

14          A       Probably I didn't view that it was my  
15      job. I wasn't obligated in some way to do your  
16      work for you or to provide you anything because  
17      we had no real relationship from my perspective.  
18      So, if there was any searching for data to  
19      support your position, that was your job.

20          Q       Now, you were aware that WSG, and I  
21      think you stated that WSG had sent you checks  
22      over the years, correct?

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1 A True.

2 Q And that you'd gone ahead and  
3 negotiated those checks, correct?

4 A True.

5 Q So, you had had some connection with  
6 WSG, correct?

7 A The earlier understanding was that it  
8 was simply a mechanism for transmitting funds. I  
9 didn't identify it as an organization per se.

10 Q Okay. Now, let's look at the next  
11 page which is the insert that we have from the  
12 courtesy of Mr. MacLean, and I think what this  
13 clears up is that if we look to the second page,  
14 that's my email all over again and then if we  
15 look at the bottom of the first page, there is an  
16 email from you to me saying that there were no  
17 attachments to this email.

18 And then a quick email from me saying,  
19 sorry about that, here it is. And then an email  
20 from you to -- it was from Joan at Bob Ross to  
21 Walt saying, Boydston's attachment, need help  
22 with this.

1 I think what this just reflects is  
2 that I screwed up or I made a mistake and I  
3 didn't attach the attachment at first and then  
4 sent it again to give you the attachment,  
5 correct?

6 A Okay, true.

7 Q Do you agree?

8 A I agree.

9 Q So, now, turning to the attachment  
10 itself, which is behind the email portion, it  
11 says, search results and it lists different dates  
12 and then account, a number, a payee and other  
13 information.

14 When you go this, did you take a look  
15 at it?

16 A I would say I scanned it but I don't  
17 think I did any comparisons with my own  
18 information or anything, no.

19 Q Okay. When you looked at it, did you  
20 think that anything here was incorrect or remiss?

21 A I saw that you did acknowledge that I  
22 had -- that there were differences between WSG

1 royalties and IPG royalties paid. So, and I  
2 don't know that I concluded anything from this  
3 attachment.

4 Q Is it your position or at the time  
5 that you saw it, did you think to yourself that  
6 you had not, in fact, never received the payments  
7 that were indicated?

8 A No, I think I was okay with what I had  
9 known that we had received regardless of how they  
10 were transmitted to us.

11 Q Okay. Sitting here today, do you have  
12 any reason to have a different opinion on that or  
13 different knowledge about that?

14 A No, except for your revelation that  
15 you collected a sum of money of mine.

16 Q I beg your pardon?

17 A Except for this new revelation today  
18 that you had filed again for -- you had filed a  
19 claim on my behalf for royalties which --

20 Q Which you didn't know before now?

21 A Correct.

22 Q Let's look at the next page of the

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1 exhibit and this references the first email, it's  
2 an email from me on February 14th, St.  
3 Valentine's Day as it were, of 2013 in which I  
4 state that we have no record of Bob Ross, Inc.  
5 informing WSG that it no longer had the right to  
6 make these claims and some other information  
7 there.

8 Below that is an email from you to me  
9 to which I was responding. Do you see that? It  
10 begins, please direct your client --

11 A Oh, yes, right.

12 Q And you were asking that WSG send you  
13 the full amount of the royalties that had been  
14 delivered for 2008, correct?

15 A Correct.

16 Q And going back up to the email by me  
17 responding, the last sentence say, if you'll  
18 provide us with a notice of termination, Bob  
19 Ross, Inc. gave to WSG, we will proceed  
20 accordingly and return the money to PBS.

21 Did you provide any information  
22 regarding a termination at that point?

1           A     I disagreed, of course, with this  
2 notice of termination. None was required.

3           Q     Okay. I appreciate that. Did you  
4 send any materials in response to this?

5           A     No.

6           Q     Look at the, not the next page, but  
7 the one after that which is an email from me to  
8 you dated February 27, 2013.

9           A     Right, yes.

10          Q     And it begins, I still have not heard  
11 from you following my last correspondence  
12 requesting that you forward whatever  
13 correspondence you have verifying your contention  
14 that Bob Ross, Inc. terminated its agreement with  
15 WSG.

16                   Did you provide any information in  
17 response to that?

18          A     I don't think so.

19                   MR. BOYDSTON: Now, let me go over to  
20 the other binder.

21                   Your Honor, may I approach?

22                   JUDGE BARRETT: You may.

1 MR. BOYDSTON: And we'll be looking at  
2 what's been marked and admitted as Exhibit 602,  
3 specifically starting with Attachment D.

4 Now, Mr. Kowalski, Attachment D was  
5 the agreement you signed with All Global Media,  
6 correct?

7 MR. KOWALSKI: Yes.

8 BY MR. BOYDSTON:

9 Q Now, in your testimony, you said that  
10 you either said or said words to the effect, I  
11 believe, that you thought that All Global Media  
12 was another reconstruction, I think was the word  
13 you used, of the entity that you had been dealing  
14 with previously, correct?

15 A In that it was Marion Oshita who was  
16 submitting it to me. I thought that was my cause  
17 for thinking that this was more a continuation of  
18 my relationship with her. Right, yes, I did say  
19 that.

20 Q And that perhaps she was operating  
21 under the company Worldwide Subsidy Group and no  
22 longer was doing that and was now operating under

1 All Global Media?

2 A No, that would be too early for me to  
3 say that it was under auspices of Worldwide  
4 because I hadn't yet in my mind linked Worldwide  
5 with All Global Media or with IPG.

6 Q Oh, I think I understand. If you  
7 could turn back to Attachment C which just  
8 precedes this one. That begins with a cover  
9 letter that says Independent Producers Group and  
10 then mandate agreement in which the parties are  
11 Bob Ross, Inc. signed by you and Independent  
12 Producers Group.

13 So, the entity that you thought you  
14 were dealing with was Independent Producers  
15 Group, is that right?

16 A Not necessarily, it's because she says  
17 she has new organizational name here. I didn't  
18 know whether that it was a -- well, I just  
19 assumed, I think, that it since it was Marion  
20 Oshita and she and I had been exchanging  
21 documentation and had an agreement prior to this  
22 and that she wanted to continue the agreement.

1           Q     Right. I feel I may have confused  
2 matters by an earlier question I asked when I  
3 said do you believe that All Global Media was a  
4 reconstruction of Worldwide Subsidy Group and you  
5 said no, Worldwide Subsidy Group, I wasn't  
6 familiar with that entity.

7                     And I think is that because the entity  
8 that the three mandate agreements were  
9 Independent Producers Group, not Worldwide  
10 Subsidy. Is that the reason?

11           A     That's ordinarily what I would be  
12 thinking, yes.

13           Q     I understand, I apologize, it was my  
14 mistake mixing up the two entities.

15                     Well, if we could kind of wipe the  
16 slate clean to a degree, I believe what you're  
17 saying is that mandated agreements were with  
18 Independent Producers Group and you understood  
19 Marion Oshita to be working under the name  
20 Independent Producers Group to begin with,  
21 correct?

22           A     Right.

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1           Q     And then when you got this different  
2     agreement from All Global Media from Marion  
3     Oshita, you assumed that Marion Oshita was now  
4     operating under the name of a different company  
5     or a different name which was All Global Media.  
6     Is that what you meant by the reconstruction?

7           A     Yes.

8           Q     I understand now. Thank you.

9                     Now, looking back at Attachment D, and  
10    that is again the All Global Media contract and  
11    fax cover sheet.

12                    Did you note that -- I don't know if  
13    you did or not -- but did you note that Marion  
14    Oshita's address was that same on the fax cover  
15    sheet as it had been previously? There's an  
16    address up in the upper left hand corner of the  
17    fax cover sheet.

18           A     I'm not sure I was making that kind of  
19    a comparison, no. Nor would it have been all  
20    that important to me, I don't think.

21           Q     Okay. Did you ever speak with Ms.  
22    Oshita about the difference in the two entity

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1 names, Independent Producers Group and All Global  
2 Media?

3 A No.

4 Q After receiving the All Global Media  
5 agreement, do you know whether or not -- do you  
6 recall whether or not you ever spoke with Ms.  
7 Oshita?

8 A I don't think I ever spoke to Ms.  
9 Oshita.

10 Q Never, ever?

11 A Ever.

12 Q Understood. Now, obviously, in this  
13 exhibit where we're looking right now is the All  
14 Global Media agreement that you signed.

15 Prior to -- well, presumably, you  
16 provided this to the attorney who's representing  
17 the Settling Devotional Claimants so that they  
18 can provide it in this exhibit, correct? Or did  
19 your counsel provide it or do you know?

20 A I'm sorry, do that again.

21 Q Let me start all over again.

22 The All Global Media agreement you

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1 have a copy of, or you have perhaps the original,  
2 correct?

3 A Yes.

4 Q How did it get to become in this  
5 exhibit book is my --

6 A Well, when you say original, it would  
7 have been something faxed, I'm sure, back and  
8 forth. So, in that context, yes, original.

9 Q Okay, I understand. And how was it  
10 that it got to be in this exhibit book? Did you  
11 provide it to your counsel or did you provide it  
12 directly to counsel for the SDC? Do you know?

13 A I gave it to my counsel.

14 Q Okay. And at any time, as far as you  
15 know, has it been provided to WSG or, excuse me,  
16 either IPG or WSG?

17 A No.

18 Q Okay. Did you ever -- well, strike  
19 that.

20 You do recall that it was requested  
21 that you provide it, correct?

22 A Not that, specifically, no. unless you



1 have something that says that.

2 MR. BOYDSTON: Well, let me make sure,  
3 let me see.

4 Well, let me ask you --- Your Honor,  
5 may I approach?

6 JUDGE BARRETT: You may.

7 MR. BOYDSTON: I'm jumping back and  
8 forth between the books a tad.

9 I'm looking back at Exhibit 53 and  
10 specifically I'm looking at an email dated March  
11 5, 2013 which would be I believe nine pages in if  
12 my counting is correct.

13 MR. KOWALSKI: Of IPG, what tab?

14 BY MR. BOYDSTON:

15 Q Fifty-three. It should be the tab  
16 that you're on.

17 A Okay, five pages in?

18 JUDGE STRICKLER: Two pages from the  
19 back.

20 MR. BOYDSTON: Thank you, Your Honor.  
21 Two pages from the back is a better way to --

22 MR. KOWALSKI: Okay.

1 BY MR. BOYDSTON:

2 Q Do you see it now?

3 A I do.

4 Q Okay. Looking at the third paragraph,  
5 the first sentence is kind of long. The second  
6 sentence is not long, well, it's up to the  
7 reader, I guess. I'm sorry, I lost my place,  
8 give me just a moment.

9 If you look at the last sentence in  
10 the third paragraph, it begins, also including  
11 should be all documents. Do you see that?

12 A Yes.

13 Q It says, also included should be all  
14 documents relating to All Global Media, the  
15 principle of which was an IPG principle at the  
16 time, but she was apparently soliciting Bob Ross,  
17 Inc.

18 Did you provide the All Global Media  
19 contract you signed in response to that email?

20 A No.

21 Q Okay. And I believe that you received  
22 checks -- well, I don't know. It appears to me

1 from the list of checks that was attached to the  
2 one email that there were checks that were  
3 provided to you both my WSG and IPG. Does that  
4 sound familiar to you?

5 And again, I'm sorry, that would be  
6 towards the front of the exhibit. It would be  
7 the one, two, three, four, the fifth page of the  
8 exhibit, it was that short spreadsheet.

9 A Okay, that's the one we just inserted?

10 Q Yes, exactly.

11 A Okay. Okay, and your question?

12 Q My question is, do you recall whether  
13 or not received checks from both WSG and IPG or  
14 is there only one or the other or do you recall?

15 A I don't recall particularly.

16 Q Okay. I think in your original  
17 testimony -- well, I think, is it fair to say you  
18 recall receiving these checks, you just don't  
19 recall which ones had which name on them?

20 A Well, that wasn't your first question,  
21 but --

22 Q No, it was not, thank you.

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1           A     Looking at this one document, I can  
2 say I don't know whether any of them were -- all  
3 were WSG or some -- and some IPG. I can't answer  
4 that question.

5           Q     Okay. And I apologize but I'm going  
6 to try and clarify this so it's very, very clear.  
7 I'll just do it this way.

8                     Do you recall whether or not you  
9 received checks that said WSG on them?

10          A     I do.

11          Q     Thank you. Do you recall whether you  
12 received checks that said IPG on them?

13          A     No.

14          Q     Okay, thank you. Turning back to my  
15 February 1st email which is the second page of  
16 the exhibit and then it precedes the stuff we  
17 added in.

18          A     Okay.

19                     JUDGE STRICKLER: Which is it?

20                     MR. BOYDSTON: Exhibit 53. And again,  
21 that second paragraph -- in that second  
22 paragraph, I ask, in the meantime, as I asked in

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1 our telephone call, could you send us all of your  
2 correspondence with WSG and whatever information  
3 you have about All Global Media's filing claims  
4 for Bob Ross, Inc.

5 I believe you've already testified and  
6 you said sent nothing in response to that,  
7 correct?

8 MR. KOWALSKI: Yes, yes.

9 BY MR. BOYDSTON:

10 Q Did you have any information regarding  
11 All Global Media's filings of claims on your  
12 behalf or on Bob Ross, Inc.'s behalf?

13 A Yes.

14 Q And what sort of things did you have?

15 A I had received checks from them.

16 Q I understand. Did you have anything  
17 else that would indicate that they had made  
18 filings?

19 A No documents that I know of, no.

20 Q Okay. Do you recall approximately how  
21 many checks you received from All Global Media?

22 A No, I can't say how many, but I know

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1 it was just for years 2004, '05 and '06.

2 Q And after 2006, you didn't receive any  
3 checks from All Global Media then?

4 A No.

5 Q Okay. Now, you did receive checks  
6 though from WSG and/or IPG after that, correct?

7 A Yes.

8 Q So, and then you were communicating  
9 with WSG. Why was it that you didn't try to  
10 explain to WSG that -- strike that.

11 Did you ever ask WSG why it was  
12 sending you checks?

13 A No, because it wasn't, again, it  
14 depends on the time factors again. I was  
15 beginning to be suspicious of things about 2012  
16 which is the preponderance of the checks that  
17 were received from Worldwide Subsidy Group.

18 And so, while I was curious about it,  
19 I didn't do anything at that point but it was  
20 soon evident after that because of my discovery  
21 from PBS that you had, in fact, been filing on my  
22 behalf.

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1                   And so, then I better understood why  
2           I was receiving those checks from Worldwide  
3           Subsidy Group.

4           Q       Did it ever occur to you that  
5           Worldwide Subsidy Group might not know that you  
6           had signed an agreement with All Global Media?

7           A       I don't know if I ever made that  
8           judgment in my own mind.

9           Q       Did Marion Oshita ever communicate to  
10          you that there was a dispute over the ownership  
11          of Worldwide Subsidy Group?

12          A       No.

13                   MR. BOYDSTON: Did Marion Oshita ever  
14          explain to you that in 2005 there was a judgment  
15          handed down which held that she was not the owner  
16          of WSG?

17                   MR. MACLEAN: Objection, Your Honor.  
18          That's not in evidence.

19                   MR. OLANIRAN: This is irrelevant.

20                   JUDGE BARRETT: Sustained.

21                   MR. BOYDSTON: Did Marion Oshita ever  
22          tell you -- and you've already testified what

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1 some of your conclusions were -- but this  
2 question's a little more detailed.

3 And it's whether or not Marion Oshita  
4 ever told you that WSG was changing its name to  
5 All Global Media? Do you ever -- did you ever  
6 get any correspondence or any explanation like  
7 that?

8 MR. KOWALSKI: No.

9 MR. BOYDSTON: Your Honor, I think I'm  
10 finished, just give me one more moment to confirm  
11 that, if I may.

12 Thank you, Your Honor, I have nothing  
13 further.

14 JUDGE BARRETT: Okay. Thank you. Mr.  
15 MacLean, how many redirect questions?

16 MR. MACLEAN: Four.

17 JUDGE BARRETT: I'll let you ask four  
18 questions.

19 Why is this examination different from  
20 all others?

21 MR. MACLEAN: I didn't say one  
22 question, Your Honor.



## REDIRECT EXAMINATION

BY MR. MACLEAN:

Q Mr. Kowalski, do you -- and I don't know, I don't want this question counted me against me, Your Honor.

Do you have IPG Exhibit 53 in front of you?

A Which one?

MR. MACLEAN: IPGP 53. Let me -- if I may approach, Your Honor?

JUDGE BARRETT: You may.

MR. KOWALSKI: I think I'm in the right place, yes, oh, 53, yes.

MR. MACLEAN: Okay. If you could turn to the third page of IPGP 53 which is an email from Brian Boydston to you dated February 14, 2013.

MR. KOWALSKI: Yes.

BY MR. MACLEAN:

Q And looking at the email at the top there, do you see the last line that says, therefore?

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1 A Yes.

2 Q If you will provide us with the notice  
3 of termination Bob Ross gave to WSG we will  
4 proceed accordingly and return the money to PBS.  
5 Do you see that there?

6 A Yes.

7 Q Now, you've already explained why  
8 there was no notice of termination. Did you have  
9 any understanding as to why WSG would return the  
10 money to PBS?

11 A No.

12 Q To your knowledge, did you ever get  
13 any indication that WSG did return the money to  
14 PBS?

15 A No, no.

16 Q After you returned the check to WSG,  
17 did you ever receive any further correspondence  
18 from or communication from WSG or its counsel?

19 A No.

20 MR. MACLEAN: No further questions,  
21 Your Honor.

22 JUDGE BARRETT: Okay.

1 JUDGE STRICKLER: Cross, if I may? In  
2 the same exhibit that you have in front of you  
3 which is IPG 53.

4 MR. KOWALSKI: Okay.

5 JUDGE STRICKLER: That very first  
6 letter, the letter on the Bob Ross letterhead.

7 MR. KOWALSKI: Yes.

8 JUDGE STRICKLER: Signed by you, sir?

9 MR. KOWALSKI: Yes.

10 JUDGE STRICKLER: You say at the very  
11 beginning, Dear Mr. Boydston, we learned recently  
12 that PBS distributed \$19,000.00 and it goes on.

13 How did you learn that PBS had  
14 distributed the money?

15 MR. KOWALSKI: Okay, I think I sent a  
16 letter to PBS or it was through legal counsel.

17 JUDGE STRICKLER: Which legal counsel  
18 are you referring to?

19 MR. KOWALSKI: Well, it would be Mr.  
20 Hammerman, sorry.

21 JUDGE STRICKLER: Mr. Hammerman was  
22 the first one to inform you about the \$19,000.00

1 begin distributed by PBS to Worldwide Subsidy  
2 Group?

3 MR. KOWALSKI: Yes.

4 JUDGE STRICKLER: Thank you.

5 RECROSS EXAMINATION

6 BY MR. BOYDSTON:

7 Q Staying on the February 14th letter  
8 that Mr. Maclean just asked you about, the middle  
9 sentence, if you will, says, WSG knows it is  
10 missing certain documents and acknowledges that  
11 it is possible that such notice was given.

12 Being informed that WSG knew it was  
13 missing some documents, did this occur to you  
14 that this might be a misunderstanding that could  
15 be cleared up by providing some information?

16 A Misunderstanding that a notice was  
17 required?

18 Q Well, just a misunderstanding that WSG  
19 didn't have all the relevant documents and it was  
20 asking you for help to get them so that WSG  
21 itself could form an understanding of why it was  
22 that you were taking the position that you were?

1           A       Well, I'm not sure what documents that  
2       you would have been searching for. There would  
3       be no document that would have terminated our  
4       relationship because that was automatically taken  
5       care of by the mandated agreements. They were  
6       good for one year, so no termination notices were  
7       required.

8           Q       I understand that.

9           A       To my understanding.

10          Q       I understand that. Did it ever occur  
11       to you that perhaps WSG didn't have the mandate  
12       agreements?

13          A       No.

14          Q       I mean I can understand that you might  
15       have thought, well, it's WSG, they should have  
16       their agreements. And was that your thought?

17          A       No.

18               MR. BOYDSTON:   Okay. Did it ever  
19       occur to you that it might help WSG if you  
20       provided the All Global Media agreements that WSG  
21       could see that you signed that agreement in 2005  
22       and that agreement governed from 2005 forward?

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1 MR. OLANIRAN: Objection to form,  
2 compound.

3 JUDGE BARRETT: Sustained.

4 MR. BOYDSTON: Did it ever occur to  
5 you that it might help inform WSG as to why you  
6 were taking the position you were if you gave WSG  
7 the All Global Media agreements?

8 MR. KOWALSKI: Okay. My  
9 interpretation of this would have been that there  
10 was no reason to be searching for documents  
11 because there was nothing ongoing and none --  
12 again, you know, I think that why this reliance  
13 on Bob Ross, Incorporated when none was required?

14 MR. BOYDSTON: I understand. Did it  
15 ever occur to you that Worldwide Subsidy Group  
16 might have been the victim of circumstance or  
17 might have made a mistake?

18 MR. MACLEAN: Objection.

19 JUDGE BARRETT: Sustained.

20 MR. BOYDSTON: Well, I'm sorry, what  
21 was the objection?

22 MR. MACLEAN: Well, calls for

1 speculation, lack of foundation and also  
2 relevance.

3 JUDGE BARRETT: Thank you. Do you  
4 want to add anything to this?

5 MR. OLANIRAN: Argumentative, Your  
6 Honor.

7 MR. BOYDSTON: Well, you had  
8 communications saying to you essentially we don't  
9 understand everything, could you give us some  
10 information. You didn't provide any information,  
11 did you?

12 MR. KOWALSKI: No.

13 BY MR. BOYDSTON:

14 Q Thank you, Your Honor.

15 Oh, the last check that was sent to  
16 you that Mr. MacLean asked you about, why was it  
17 that you didn't deposit that check?

18 A Because it wasn't the total amount.

19 MR. BOYDSTON: Thank you, nothing  
20 further.

21 JUDGE STRICKLER: Mr. Kowalski, I just  
22 wanted to follow-up briefly on a question I'd

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1 asked you before.

2 You had said you when you wrote that  
3 you had learned recently that PBS had distributed  
4 the \$19,000.00 plus, you believe you learned it  
5 from Mr. Hammerman who was counsel, is that  
6 correct?

7 MR. KOWALSKI: I must have meant that  
8 my recollection is vague on this. I may, and I  
9 was looking for it, I may have sent a letter on  
10 my own to PBS and I -- but I can't remember  
11 precisely at this point.

12 JUDGE STRICKLER: Had you been in  
13 touch with anyone from the SDC or the MPAA at  
14 that point before you wrote the letter?

15 MR. KOWALSKI: No.

16 JUDGE STRICKLER: Thank you.

17 JUDGE FEDER: Mr. Kowalski, you said  
18 that your daughter had been to some sort of PBS  
19 event and that that's what kind of spiked your  
20 suspicions. Can you explain what did she report  
21 to you that you found suspicious?

22 MR. KOWALSKI: Speculating, I think I



1 was already creating some questions in my mind  
2 because of these last minute payments that we  
3 were getting with letterheads covered by  
4 Worldwide Subsidy Group.

5 And probably meaning to look into this  
6 more closely and then to hear from her that she  
7 had been at a PBS trade event where she has a  
8 booth showing Bob Ross and his activities.

9 And it was there that she was hearing  
10 rumblings about that there were -- there seemed  
11 to questions about payments of royalties, et  
12 cetera. And she reported that to me and that --  
13 and I think my remark to her probably was, you  
14 know, I've been meaning to look into that myself.

15 JUDGE STRICKLER: Did she tell you  
16 about problems -- I'm sorry -- tell you about  
17 problems with royalties with regard to any of  
18 these particular named entities or just problems  
19 with royalties in general?

20 MR. KOWALSKI: In general, I don't  
21 think she mentioned any entities. But she knew  
22 that we had this ongoing -- she was already aware

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1 of the fact that we had a file on an incident we  
2 were receiving royalties from somebody. So it  
3 was more of the tipoff to be alert and that was  
4 the point at which we engaged our own counsel.

5 JUDGE STRICKLER: Thank you.

6 JUDGE BARRETT: Mr. Olaniran?

7 MR. OLANIRAN: Just one quick  
8 question, Your Honor, if I may?

9 JUDGE BARRETT: You may.

10 MR. OLANIRAN: Good afternoon, Mr,  
11 Kowalski.

12 MR. KOWALSKI: Good afternoon.

13 MR. OLANIRAN: My name is Greg  
14 Olaniran. I represent MPAA. I just have one  
15 final -- I just have one question I want to get  
16 clarification on in your earlier testimony.

17 You sent a letter to Mr. Boydston, a  
18 letter dated January 16 of 2013. That's the  
19 first page, I believe in the --

20 MR. KOWALSKI: Yes, right.

21 MR. OLANIRAN: And I think about two  
22 paragraphs down, you instruct Mr. Boydston not to

1 have IPG represent Bob Ross, Inc. in any form or  
2 fashion going forward, correct?

3 MR. KOWALSKI: Yes.

4 MR. OLANIRAN: Okay. And the next  
5 page in that exhibit is the -- I guess it's more  
6 than one question.

7 The next page in that exhibit in which  
8 I think the second paragraph, Mr. Boydston is  
9 requesting information.

10 Your interpretation on the basis of  
11 your January 16 letter is that you had no  
12 obligation to provide any information to Mr.  
13 Boydston having made it clear that you had no  
14 relationship with him, correct?

15 MR. KOWALSKI: Correct.

16 MR. OLANIRAN: Thank you.

17 JUDGE STRICKLER: Mr. Kowalski, have  
18 you ever received from any source the payment of  
19 the \$19,503.66 that apparently was due for the  
20 2008 year?

21 MR. KOWALSKI: No, we've not yet  
22 received that money, no, that was collected by

1 Worldwide Subsidy.

2 JUDGE STRICKLER: Thank you.

3 MR. BOYDSTON: Your Honor, may I ask  
4 a question?

5 JUDGE BARRETT: You many.

6 MR. BOYDSTON: Mr. Kowalski, although  
7 you did not receive a check for \$19,503.66, did  
8 you receive the check that you returned in the  
9 amount of approximately I think \$14,000.00 and  
10 change?

11 MR. KOWALSKI: I think it was  
12 \$15,000.00-something, yes.

13 BY MR. BOYDSTON:

14 Q Yes. And that's the one you returned?

15 A Yes.

16 Q And I believe you -- did you receive  
17 that in April of 2013 thereabouts?

18 A I don't remember.

19 Q Was it within several months after  
20 this email?

21 A Not anywhere in here, okay, no, I'm a  
22 little bit unsure of the date, sorry.

1 JUDGE STRICKLER: Mr. Kowalski,  
2 regardless of you understood was your agent for  
3 the year 2008 for purposes of collecting the  
4 royalties, did you have an understanding that  
5 whatever entity was your appropriate agent that  
6 agent was going to take a percentage pursuant to  
7 your agreement with that agent?

8 MR. KOWALSKI: Yes.

9 JUDGE STRICKLER: Do you have an  
10 understanding of what that percentage was?

11 MR. KOWALSKI: Fifteen percent.

12 JUDGE STRICKLER: Because that was in  
13 the --

14 MR. KOWALSKI: All Global Media.

15 JUDGE STRICKLER: All Global Media.  
16 And the amount that was being withheld by IPG or  
17 Worldwide Subsidy Group was 20 percent?

18 MR. KOWALSKI: Twenty to 30 percent.

19 JUDGE STRICKLER: Well, which was it?  
20 Do you recall off hand? Was it 20 percent?

21 MR. KOWALSKI: Both, there were some  
22 received at 20 percent and some received at 30

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1 percent.

2 JUDGE STRICKLER: Was the one in  
3 question, the \$19,000.00 and change, was that a  
4 20 percent or a 30 percent, if you know?

5 MR. KOWALSKI: I don't remember.

6 JUDGE STRICKLER: Well, the numbers --  
7 you need math to figure that out?

8 MR. KOWALSKI: I don't -- I  
9 understand. I'm sure it's here somewhere.

10 MR. BOYDSTON: I have nothing further.

11 MR. KOWALSKI: Oh, this is your book.

12 JUDGE BARRETT: Anything further from  
13 counsel based on Judge Strickler's last question?

14 MR. MACLEAN: No, Your Honor.

15 MR. OLANIRAN: No, Your Honor.

16 JUDGE BARRETT: Okay. We are at recess  
17 for 15 minutes.

18 MR. MACLEAN: Your Honor, may the  
19 witness be excused?

20 JUDGE BARRETT: Yes.

21 MR. KOWALSKI: Thank you.

22 JUDGE BARRETT: Thank you.

1 (Whereupon, the above-entitled matter  
2 went off the record at 3:18 p.m. and resumed at  
3 3:41 p.m.)

4 JUDGE BARRETT: Please be seated. Mr.  
5 Boydston, are we ready to resume -- oh, Mr.  
6 Olaniran is going to resume.

7 MR. BOYDSTON: I think he's on again.

8 (Laughter.)

9 WHEREUPON,

10 RAUL GALAZ,  
11 the Witness, having been previously sworn,  
12 resumed the stand and testified as follows:

13 CROSS EXAMINATION

14 BY MR. OLANIRAN:

15 Q Good afternoon, Mr. Galaz. Greg  
16 Olaniran, counsel for the Motion Picture  
17 Association.

18 A Good afternoon.

19 Q And thank you for accommodating all of  
20 the day's schedules. You were cut at midpoint in  
21 your cross-examination. I have just one  
22 question, except it's in multiple parts. Just in

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1 the spirit of Mr. MacLean's questioning fashion.  
2 Would you please turn to Exhibit 332?

3 (Pause.)

4 THE WITNESS: Okay, I'm there.

5 BY MR. OLANIRAN:

6 Q You're there? And this is the  
7 affidavit that Mr. Fred Nigro, on behalf of  
8 Worldwide Pants. Do you see that?

9 A Yes.

10 Q And the affidavit talks about why it  
11 is -- its distributor CBS, and not IPG, is  
12 entitled to claim royalties on its behalf, right?

13 A If you could direct me to the  
14 paragraph.

15 Q If you look at paragraph eight of the  
16 -- it's on the next page, on page two of the  
17 affidavit.

18 A Okay, I see that paragraph.

19 Q Do you see that? And it talks about  
20 its distribution deal with CBS; correct?

21 A The distribution deal?

22 Q It talks about CBS being its

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1 distributor.

2 A Yes, it definitely says that CBS is  
3 WPI's distributor, Worldwide Pants' distributor.

4 Q Okay, and as you know, CBS is  
5 represented by MPAA; right?

6 A That's correct.

7 Q Okay, and the affidavit also makes  
8 clear that IPG is not authorized to represent  
9 Worldwide Pants in this proceeding; correct?

10 A That's what it says.

11 Q Okay, and IPG has not produced any  
12 documentary evidence to show that Worldwide Pants  
13 has changed its position since filing this  
14 affidavit, has it?

15 A No.

16 Q Okay, and in fact IPG sued Worldwide  
17 Pants about IPG's right to collect U.S.  
18 retransmission royalties for Worldwide Pants; is  
19 that correct?

20 A That's correct, following -- okay.  
21 Yes, that's correct.

22 Q And in that lawsuit, for what royalty

1 years are you asserting that you were denied the  
2 right to collect royalties, retransmission  
3 royalties?

4 A Well, it's somewhat narrower than that  
5 I think, because we did collect for several years  
6 outside the United States. We collected a  
7 significant sum.

8 Q I'm actually referring to the United  
9 States.

10 A To the U.S., okay. In the U.S., I  
11 think it's -- my recollection is it's two -- and  
12 this is just my recollection -- it was 2000, I  
13 think, through either 2003 or 2004. Then there  
14 was a break, and this I do remember, that we  
15 picked it up the 2006 filing that was made July  
16 2007 and prospectively.

17 Q Would you please turn to exhibit -- I  
18 guess it's Exhibit B, which is an attachment to  
19 Mr. Nigro's affidavit.

20 A Okay.

21 Q And this is the August 6th, 2002  
22 letter terminating IPG's representation of

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1 Worldwide Pants; correct?

2 A Termination? I think it's a recession  
3 letter, which I would characterize as somewhat  
4 different.

5 Q Okay, fair enough. Now let's turn to  
6 Exhibit C of that affidavit. Are you there?

7 A Yes.

8 Q Now this is another letter from  
9 Worldwide Pants' counsel, modifying the original  
10 agreement, merely to change the end date of  
11 termination of your agreement; correct?

12 A I see that, yes.

13 Q Okay, and IPG did not produce either  
14 one of these documents you just looked at to  
15 MPAA, did it?

16 A That's correct.

17 Q You've maintained -- you testified  
18 earlier, I think yesterday, that U.S.  
19 broadcasters and foreign distributors are falsely  
20 attributed copyright ownership, and I think you  
21 provided an exhibit in which you purported to  
22 demonstrate and identify where such incidents

1 occurred; correct?

2 A That's correct.

3 Q And just to be clear, the exhibit was  
4 based on the famous Excel spreadsheet that we  
5 have been talking about pretty much for the last  
6 couple of days; correct?

7 A The MPAA spreadsheet, Excel program,  
8 Excel file that was produced in response to the  
9 July 30 order, that's correct.

10 Q Right, and that exhibit is not based  
11 on Ms. Saunders' written direct testimony about  
12 the titles that MPAA is claiming in this  
13 proceeding; correct?

14 A You're asking -- I'm sorry. You're  
15 asking me what the Excel spreadsheet is based on?

16 Q No. I'm asking you your exhibit,  
17 which excerpts information, excerpted information  
18 from the MPAA Excel -- I'm sorry, from the MPAA's  
19 written direct statement.

20 A Sure. My exhibits were constructed  
21 exclusively from the Excel spreadsheet produced  
22 by the MPAA.

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1           Q       Thank you very much.   That was the  
2       clarification that I was looking for.

3                   MR.       BOYDSTON:               Objection,  
4       non-responsive to the question.

5                               (Laughter.)

6                   JUDGE BARRETT:   Go ahead, Mr. Olaniran  
7       please.

8                               BY MR. OLANIRAN:

9           Q       Let's turn to Exhibit 18?

10          A       Eighteen?

11          Q       Yes.    It would be IPG 18.    It's  
12       somewhat redundant.   Your Honor, we actually  
13       agreed before the proceeding that we were going  
14       to make sure that the numbers didn't overlap.   So  
15       it doesn't really matter whether you identify by  
16       any particular party.   The numbers are pretty  
17       much unique to each exhibit.

18                   JUDGE BARRETT:   We took that -- we  
19       noted that, and we're very, very appreciative of  
20       the effort, and you're right.

21                   MR. OLANIRAN:   I take full credit for  
22       making that suggestion.

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1 JUDGE BARRETT: The designation is not  
2 critical, because as I said before, every party's  
3 entitled to the benefit and the burden of all  
4 evidence that is admitted. And now that we've  
5 had this conversation, I've forgotten what number  
6 we're looking for.

7 BY MR. OLANIRAN:

8 Q Eighteen.

9 A Thank you.

10 Q Mr. Galaz, I meant 21. I had it mixed  
11 up with the numbers. I meant Exhibit 21.

12 A Okay. I have it right here.

13 Q And now what is Exhibit 21? What does  
14 that represent?

15 A Exhibit 21 is a printout from the  
16 online database of the U.S. Copyright Office.  
17 It's a -- my understanding is that it's the  
18 copyright registration for the American Film  
19 Institute 2001 Lifetime Achievement Award program  
20 to Barbara Streisand. That's the application  
21 title that appears on this.

22 Q And this is the exhibit that you are

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1 using to substantiate the fact that AFI is  
2 entitled to royalties for the title "AFI Life  
3 Achievement: A Tribute to Barbara Streisand"; is  
4 that correct?

5 A Well, I think exclusively no. There's  
6 also, if I recall correctly, reference to the AFI  
7 programs in the contract between IPG and the  
8 American Film Institute. It's an exhibit.

9 Q You're talking about your  
10 representation agreement with AFI; is that  
11 correct?

12 A That's correct.

13 Q Okay. So besides the representation  
14 agreement and the only other evidence you have  
15 offered here is this, which is really -- is this  
16 search of the public -- are the results of a  
17 search of the Copyright Office's public  
18 catalogue; is that correct?

19 A The only other thing I'd have to  
20 check, if I could check 115, Exhibit 115, that  
21 would help refresh my recollection, because  
22 otherwise I can't answer that from memory.

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1 Q Oh. Would you like to check that now?

2 A Yes, sure.

3 (Pause.)

4 THE WITNESS: The American Film  
5 Institute indicates that the documents that we  
6 produced --

7 BY MR. OLANIRAN:

8 Q I'm sorry, Mr. Galaz. Which exhibit  
9 are you looking at?

10 A I'm sorry, 115.

11 Q 115, I'm sorry. I was looking at 15.

12 (Pause.)

13 BY MR. OLANIRAN:

14 Q Okay, go ahead.

15 A And in looking at 115, it indicates  
16 that there are documents in a variety of  
17 categories that had been produced, having to do  
18 with American Film Institute. I'm not clear on  
19 which of those specifically address this  
20 particular program. But beyond these which have  
21 been produced, we didn't produce our electronic  
22 records, maybe we should have, that were --

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1       excuse me, the electronic records that were  
2       produced to the MPAA, that were sent back from  
3       parties.

4               These would be the only documents that  
5       we presented, at least in these proceedings, to  
6       substantiate AFI's claim for this particular  
7       program.

8               Q       Now these other documents that you  
9       referred to, were they in your written rebuttal  
10      statement or did you produce them afterwards, the  
11      documents that you identified in --

12              A       In 115?

13              Q       Yes.

14              A       They were compiled in a response to  
15      the MPAA rebuttal statement. So it was part of  
16      the exhibits that were exchanged a week prior to  
17      this proceeding.

18              Q       Okay.

19              A       But just to clarify, they have been  
20      previously produced.

21              Q       Prior to the hearing, but not in  
22      connection with the written rebuttal statement?

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1 A Well --

2 Q It is the written rebuttal statement?

3 A It wouldn't be with our, it's called  
4 rebuttal, to the MPAA, because it's in a response  
5 to your rebuttal.

6 Q Okay, I understand. Now for some of  
7 the titles that are in question, the only  
8 information you provide is the search results  
9 from the public catalogue in the Copyright  
10 Office. This is an online search engine to  
11 search for information about different titles and  
12 names of owners of titles; correct?

13 A That's correct.

14 Q And for some of the titles that are in  
15 question here, the only document you provide,  
16 with perhaps the exception of what is in your  
17 representation agreement, is the search results  
18 from the public catalogue; correct?

19 A I'm not sure. I would have to go back  
20 through and think about that.

21 Q Well, let me ask it this way. For  
22 those titles for which you only produced

1 representation agreement, I mean search results  
2 of the public catalogue, are you asking the  
3 Judges to conclude from the search results that  
4 the claimant on whose behalf IPG is advocating is  
5 entitled to royalties?

6 A Well, your question just prior to this  
7 asked me to -- if that was the case, that I was  
8 relying exclusively on this, and I said I  
9 couldn't recall if there was any circumstances in  
10 which for program title we're asking or only  
11 presenting exclusively an online copyright  
12 search.

13 This question asked me for those that  
14 I can't identify whether that's the case. So if  
15 you could direct me to a particular program, I  
16 could tell you whether or not our evidence is  
17 exclusively an online search or not. I don't  
18 think that's the case, but --

19 Q Okay. Well let me ask you about for  
20 -- with regard to AFI, you say that's the  
21 representation agreement, and somehow the  
22 documents which you cannot identify.

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1           A       I'm sorry, that I can't identify.

2           Q       That you can't -- you have the Bates  
3 stamp numbers, I guess, on Exhibit 115, but you  
4 don't know what the documents are. Is that what  
5 you --

6           A       Unless I go through them.

7           Q       I understand, and in the interest of  
8 time, I don't know that that will be necessary.  
9 If you can't remember -- if it's in the record,  
10 it's in the record, right. For those that you  
11 can recall, let me ask you about DragonBall Z.

12          A       Okay.

13          Q       With regards to DragonBall Z, you also  
14 provide only, at least with respect to a tie to  
15 ownership. I know that you provide -- I know the  
16 search results from the Copyright Office's public  
17 catalogue; is that right?

18          A       Well, again looking at 115, if you  
19 look -- I know that's Funimation Productions, and  
20 if you look at Funimation Productions, you'll see  
21 that there were documents produced in several  
22 categories.

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1 I happen to know that just from memory  
2 that DragonBall Z is actually identified within  
3 the contracting documents that IPG had with  
4 Funimation Productions, and I happen to know from  
5 my experience in the children's animation field  
6 that Funimation is the producer and owner of  
7 DragonBall Z.

8 Q Well let me ask the question this way.  
9 To the extent that you only provided the search  
10 results from the Copyright Office's public  
11 catalogue to support your position that the  
12 copyright owner whose name appears on that search  
13 result is entitled to royalties, are you asking  
14 the Judges to conclude from that search result  
15 that that copyright owner is entitled to  
16 royalties?

17 A So are you asking -- I'm not being  
18 cute. But are you asking me as a hypothetical,  
19 or could you direct me to a particular  
20 circumstance in which that's actually true,  
21 because I don't think that's actually occurred.

22 JUDGE STRICKLER: Counsel, is your

1 question premised on if we tried to turn this  
2 into a reference to IPG P-115, whether he's  
3 asking this to accept his position based on  
4 documents that only fall within the column that's  
5 called Item 9 and Item 4, and nothing else?

6 MR. OLANIRAN: I'm not sure I  
7 understand your question.

8 JUDGE STRICKLER: You wanted to know  
9 whether or not IPG was -- there were certain  
10 situations in which IPG is only relying on the  
11 catalogue search; correct?

12 MR. OLANIRAN: Correct.

13 JUDGE STRICKLER: And isn't that the  
14 column that's Item 9 in IPG 115?

15 MR. OLANIRAN: That's correct, Your  
16 Honor.

17 JUDGE STRICKLER: Okay. So can you  
18 reference him to one or more of the ones that  
19 you're talking about? It's not that arduous, and  
20 you're not -- you're not omitting Item 4.

21 You're saying if it's only -- you're  
22 asking him about agreements that are only in the

1 column, the first column Item 4, and Item 8 and  
2 nothing else, right?

3 MR. OLANIRAN: Item 9, Your Honor.

4 JUDGE STRICKLER: Item 9, excuse me.

5 MR. OLANIRAN: Okay. Well let me ask  
6 you this, Mr. Galaz. Take a look at Item 15.  
7 Well actually they're specific. I have the  
8 names.

9 JUDGE STRICKLER: Any way you want to  
10 do it.

11 BY MR. OLANIRAN:

12 Q Okay well --

13 A Exhibit 15? .

14 Q Yes. Let's look at Item 15, and for  
15 Dragonball Z --

16 A 115, I'm sorry.

17 Q Thank you.

18 A 115.

19 Q And for DragonBall Z, other than the  
20 representation agreement and a kind of research  
21 from the Copyright Office, do you have any other  
22 documents?

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1           A       Yes.

2           Q       And those would be the documents in  
3       Item 10, which is correspondence between the  
4       various parties.

5           A       Well, it indicates it's in -- well, it  
6       indicates that there's a representation  
7       agreement. I happen to know that the  
8       representation agreement explicitly says  
9       DragonBall Z. It's listed on the exhibit. I  
10      just remember it. That's also --

11                 JUDGE STRICKLER: Are we talking about  
12      the line item for Funimation?

13                 THE WITNESS: That's correct, Your  
14      Honor. So if you go across, you can see there's  
15      documents that have been produced in Item 6,  
16      which is simply documents that were provided to  
17      us in connection with the contracting documents.

18                 So it will -- it will typically be  
19      actually a schedule in or an exhibit to the  
20      contracting document that will identify a  
21      particular program or a correspondence that came  
22      back, you know.

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1           That may have been a cover letter  
2           saying hey, these are our programs.   There's  
3           also, let's see Item 7, which is IPG represented  
4           programs previously provided to IPG.   So there's  
5           probably some correspondence in connection with  
6           that.

7           There's account statements from AGICOA  
8           NCC, Copyright Collective of Canada for  
9           IPG-represented programs.   That's Item 8, and  
10          that's the basis of what's been previously  
11          produced to the MPAA that would substantiate the  
12          claim of Funimation Productions to DragonBall Z.

13           Q       So were any --

14           A       In addition to the copyright search.

15           Q       Well let me just ask you a general  
16          question about it.   There is no instance where  
17          you rely solely on -- for you claim about a  
18          title, where you rely solely on the search  
19          results from the public catalogue and your  
20          representation agreement?

21           A       I don't know.   I'd have to go back and  
22          look at that.

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1 Q Well let's move on.

2 JUDGE STRICKLER: Can't you do that  
3 from looking at Exhibit 115?

4 THE WITNESS: So it would be a  
5 cross-reference if there was only something in  
6 Item 4 and Item 9. But actually that's not  
7 completely accurate, because Item 4 does not  
8 always include the online search. It's much  
9 broader and so it might not include just the  
10 online search.

11 So again, if you were to narrow it to  
12 the ones that we produced in this particular  
13 proceeding, then it would be narrower than what's  
14 in here.

15 BY MR. OLANIRAN:

16 Q I don't -- you mean Item 4 is just a  
17 representation agreement. I don't know how that  
18 would be a public search.

19 A No, no. No, what I'm saying is Item  
20 9 includes, if you read it, it says "Catalogue  
21 Search by IPG and Third Parties Copyright  
22 Mortgages." That can include, for instance, a

1 search with Internet, maybe a database, IMDB.com.

2 It could include copyright  
3 registrations. It could include -- there was one  
4 instance in which it was a third party that had  
5 testified about Infomercial Monitoring Service.

6 Q Well let me rephrase the question  
7 then, just to make it easier. Is there an  
8 instance where you've produced only something  
9 that you categorize in Item 4 and Item 9?

10 A And I testified before, I don't  
11 believe so. But to answer Judge Strickler's  
12 question, because Item 9 is broader than just an  
13 online search of the Copyright Office, I can't  
14 just look at those two and be able to answer your  
15 question.

16 Q I think Judge Strickler asked you to  
17 simply look at 115, to determine whether you have  
18 any claims for which you've provided support only  
19 from Item 4 and Item 9.

20 JUDGE STRICKLER: That's the question.

21 THE WITNESS: I could do that.

22 JUDGE STRICKLER: Well, does the

1 document speak for itself? You think the  
2 document is accurate, and if it speaks for itself  
3 in that regard, you have no corrections to it.

4 THE WITNESS: That's correct, Your  
5 Honor.

6 JUDGE STRICKLER: We don't have to go  
7 through it.

8 BY MR. OLANIRAN:

9 Q I think you also have a declaration  
10 from Mr. Cosgrove, a line that I think it's  
11 Allied Communications is making a claim for  
12 Victim of Love, is that right? Are you still  
13 maintaining that in light of Ms. Saunders'  
14 testimony this morning?

15 A I think what we'd have to go back and  
16 look at is to see, you know, whether it's the  
17 same Victim of Love broadcasts that are being  
18 made claim for. There's admittedly circumstances  
19 where there's the same programming, and I don't  
20 think that there's any doubt about that.

21 Q Mr. Galaz, this issue came up in the  
22 1997 Phase 2 Cable Proceeding, and you testified

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1 in that proceeding; correct?

2 A Yes, I did.

3 Q And you made the same allegation in  
4 that proceeding, didn't you?

5 A Actually, I don't recall that. In  
6 fact, I hadn't even recalled -- frankly, I had  
7 not even recalled remotely that there had been  
8 any issue with Victim of Love.

9 Q You had no recollection whatsoever?

10 A I had absolutely no recollection  
11 having to do with that particular issue, of the  
12 two. But I'm convinced now that there's clearly  
13 two Victim of Loves that are being made claim  
14 for, one by Cosgrove Meurer and one by Allied  
15 Communications.

16 Q Approach, Your Honor?

17 JUDGE BARRETT: Yes.

18 (Pause.)

19 JUDGE BARRETT: This would be what's  
20 pre-marked as MPAA 361.

21 (Whereupon, the above-referred to  
22 document was marked as MPAA Exhibit

1 No. 361 for identification.)

2 BY MR. OLANIRAN:

3 Q Mr. Galaz, I have just handed you a  
4 document pre-marked as 361. Do you have that in  
5 front of you?

6 A Yes, I do.

7 Q And do you recognize that document?

8 A Off the top of my head, no. But I can  
9 see that it was produced in discovery from the  
10 Bates stamps.

11 Q Produced in discovery by whom?

12 A By IPG.

13 Q To the parties; correct?

14 A That's correct.

15 MR. OLANIRAN: Your Honor, move to  
16 admit MPAA -- I'm sorry, Exhibit 361.

17 MR. BOYDSTON: No objection.

18 MR. MACLEAN: No objection.

19 JUDGE BARRETT: 361 is admitted.

20 (Whereupon, the above-referred to  
21 document was received into evidence as  
22 MPAA Exhibit No. 361.)

1 BY MR. OLANIRAN:

2 Q Okay. Mr. Galaz, just could you flip  
3 to the second page of that document?

4 A Okay.

5 Q And sort of beginning about --  
6 beginning at the top of the page, there's a list  
7 of titles; do you see that?

8 A Yes.

9 Q And it's an email chain, this  
10 particular one to -- I assume similarly addressed  
11 to a Denise. I assume that's Ms. --

12 MR. BOYDSTON: Your Honor, I'm sorry.  
13 It's restricted.

14 JUDGE BARRETT: Yes, it is.

15 MR. BOYDSTON: Your Honor, while we  
16 were in this hearing, in my spare time I  
17 identified the six that -- on Exhibit 115 that  
18 Judge Strickler was asking about. If you'd like,  
19 I can tell them to you, the ones that have a  
20 reference only for Item 4 and Item 9.

21 JUDGE BARRETT: Thank you.

22 JUDGE STRICKLER: We'll include it,

1 and he's in the middle of something. So why  
2 don't you just hold it, if you don't mind?

3 MR. BOYDSTON: No, I certainly don't.  
4 Thanks.

5 JUDGE STRICKLER: If it was a more  
6 crowded room you'da had me.

7 MR. OLANIRAN: I think I moved -- I  
8 don't recall if 361 was admitted.

9 JUDGE BARRETT: Yes.

10 BY MR. OLANIRAN:

11 Q Okay, and you're on the second page of  
12 that exhibit, right Mr. Galanz?

13 A Yes.

14 Q And you see the list of titles?

15 A Yes.

16 Q And the second title on the list of  
17 titles is -- I'm sorry. Yes, the second title  
18 says "Victim of Love: The Shannon Mohr Story."  
19 Do you see that?

20 A That's correct.

21 Q And you heard Ms. Saunders testify to  
22 that this morning; correct?



1 A Yes.

2 Q Okay, and when you were communicating  
3 with Mr. Cosgrove, I assume -- strike that. I  
4 assume you had communications with Mr. Cosgrove  
5 before you finalized his affidavit; correct?

6 A I'm sorry. Can you repeat that  
7 question?

8 Q I said I assume that you had  
9 communications with Mr. Cosgrove before he  
10 completed his affidavit?

11 A That's correct.

12 Q Okay, and as you testified, I believe  
13 yesterday, in some cases you actually drafted a  
14 template of the affidavit and sent it to your  
15 claimant; correct?

16 A That's correct.

17 Q And when they said to you these are  
18 the titles that we're claiming, and what further  
19 investigation did you do besides just taking the  
20 information from them and then putting it in your  
21 written rebuttal statement?

22 A What further --

1 Q What further investigation did you do,  
2 yes, about whether or not the claims that your  
3 claimants were making were valid.

4 A Oh, I'm sorry. I thought you were  
5 asking what further investigation about whether  
6 there's a conflicting claim, or whether our  
7 claims were valid.

8 Q Actually, I meant conflicting claim,  
9 yes.

10 A That there was a conflicting claim?

11 Q Yes.

12 A It was based purely on the Excel  
13 spreadsheet that was produced. If the Excel  
14 spreadsheet reflected that there was a particular  
15 MPAA-represented copyright owner, purported  
16 copyright owner or agent, that was making claim  
17 for a particular program for a particular year,  
18 we ran basically a comparison of those two, in  
19 order to find what conflicts came up.

20 Q What information did Mr. Cosgrove give  
21 you to support his claim for a particular title?

22 A In this particular case, his

1 declaration. I mean I happen to know that  
2 there's probably other evidence having to do with  
3 that. It's not referenced in Exhibit 115 because  
4 his claim wasn't being challenged so --

5 Q I understand what you're saying. I'm  
6 sorry. I didn't mean to cut you off.

7 A No, go ahead.

8 Q Exhibit 115 is information that you  
9 took from MPAA. My question is a little bit  
10 different. Exhibit 115 came from -- I'm sorry.

11 A I'm sorry.

12 Q My question really is what other  
13 information did your client give you to  
14 substantiate its claim to the titles that have  
15 now -- or that are now purportedly in conflict?

16 A I would say that in general, nothing  
17 more was provided, because all that was requested  
18 was the declaration. Typically, some of them  
19 offered other matters. They would just include  
20 -- and the one that comes to mind was  
21 Freewheelin' Films, that sent a variety of  
22 materials --

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1 Q Let's stick with --

2 A With regard to Cosgrove Meurer, just  
3 declaration. I didn't request any further  
4 information, and so it was only the declaration  
5 that he provided.

6 Q Okay, and on that declaration, he also  
7 mentioned Yesterday's Children. He didn't  
8 provide you anything else other than his words;  
9 correct?

10 A Other than his declaration, that's  
11 correct.

12 Q And with regard to Presumed Guilty, he  
13 didn't provide anything else; correct?

14 A That's correct.

15 Q And you didn't endeavor to go on IMDB,  
16 which I know you've testified that you used quite  
17 extensively. You didn't endeavor to look to see  
18 perhaps if that could be a conflict with regard  
19 to the titles that he's claiming?

20 A Actually, I'm not sure if I can answer  
21 that, because I know that for certain titles, I  
22 did. I'm just not immediately recalling which

1 ones, and there's a reason for that.

2 (Pause.)

3 BY MR. OLANIRAN:

4 Q And do you recall on I think it was --  
5 I'm losing my dates, but I think it was on  
6 Tuesday, I think, was when you first got -- when  
7 we first started having a conversation, and I  
8 asked you if you were still paying restitution to  
9 MPAA?

10 A That's correct.

11 Q And you responded that that is the  
12 case, and you said, I recall, it was 25 percent  
13 of your income; correct?

14 A That's correct.

15 Q Do you know what the amount was or  
16 amount is?

17 A That's remaining?

18 Q That you're paying on a monthly basis.

19 A No.

20 Q You have no idea?

21 A At this point, no.

22 Q Did you at any point remember how much

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1       --

2           A       I'm sure at some point I recalled,  
3       because it's a calculation of net income that  
4       gets paid to the U.S. Attorney's Office.

5           Q       Are you suggesting that that amount  
6       may have changed over the years, the monthly  
7       amount would have changed over the years?

8           A       Yes, yes.

9           Q       And you're absolutely certain about  
10      that?

11          A       Yes. I'm certain that it hasn't been  
12      stagnant.

13          Q       Do you know what, how much the amount  
14      started out with?

15          A       No, I have no idea.

16          Q       So how long have you been paying  
17      restitution?

18                   MR. BOYDSTON: Your Honor, I'll object  
19      on relevance. I mean this crime is common  
20      knowledge. The details of restitution is --

21                   JUDGE BARRETT: Your objection is  
22      stated, Mr. Boydston. What's the relevance of

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1 this?

2 MR. OLANIRAN: Impeachment, Your  
3 Honor.

4 JUDGE BARRETT: Sustained.

5 MR. BOYDSTON: Can I let the people  
6 back in?

7 JUDGE BARRETT: Yes. I was just going  
8 to say, are we still in restricted?

9 MR. OLANIRAN: I have no further  
10 questions, Your Honor.

11 MR. BOYDSTON: Oh, I'm sorry. Go  
12 ahead.

13 CROSS EXAMINATION

14 BY MR. MACLEAN:

15 Q Good afternoon, Mr. Galaz.

16 A Good afternoon.

17 Q I may be sending you on a document  
18 hunt here. I've got a few exhibits here that  
19 were only offered into evidence or only added to  
20 the binders first time today.

21 So first, I'm going to ask you if you  
22 can locate there IPG Exhibit 125, which might --

1 which I presume was added to the end of the IPG  
2 exhibit binders.

3 JUDGE BARRETT: I recall that one was  
4 put in the binder.

5 THE WITNESS: I think I have it.

6 BY MR. MACLEAN:

7 Q You have it in front of you now?

8 A Yes, I do.

9 Q Now these are printouts from the  
10 Copyright Office public catalogue; correct?

11 A That's correct.

12 Q Did you do the research to do these  
13 searches and printouts yourself?

14 A Yes.

15 Q Will you take a look at the second  
16 page of IPG 125? This is a printout for the  
17 title Mighty Morphin Power Rangers; correct?

18 A Correct.

19 Q And the copyright claimant here is  
20 listed as Saban Entertainment, Inc.?

21 A Saban Entertainment.

22 Q Saban Entertainment, Inc. Are you



1 familiar with Saban Entertainment, Inc.?

2 A At one time I was very familiar. I  
3 mean I know who they are, yes.

4 Q And how are you familiar with Saban  
5 Entertainment, Inc.?

6 A Saban Entertainment is very well known  
7 in the industry, because of the way they came  
8 into existence and their extraordinary success  
9 specifically with Mighty Morphin Power Rangers.

10 They started off as an entity that  
11 went to animation studios and specifically --  
12 the one that does the Flintstones, that had the  
13 huge library?

14 JUDGE FEDER: Hanna-Barbera?

15 THE WITNESS: I'm sorry,  
16 Hanna-Barbera. Hanna-Barbera, thank you, Your  
17 Honor. Went to Hanna-Barbera and others like DIC  
18 and made them an offer they couldn't refuse  
19 saying --

20 BY MR. MACLEAN:

21 Q That's really not --

22 A You asked background. You were asking

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1 me background on them and I know a fair amount of  
2 background.

3 Q I was asking actually how are you  
4 familiar with Saban Entertainment, Inc.?

5 A Knowledge of the children's animation  
6 field.

7 Q And for reference, and I mean you  
8 might be able to confirm this without looking at  
9 the exhibit, but I'm going to refer to MPAA  
10 Exhibit 336, which is I believe the certification  
11 to which the Mighty Morphin Power Rangers'  
12 copyright reference relates.

13 This is a certification for ABC Family  
14 Worldwide, Inc., formerly known as Fox Family  
15 Worldwide, Inc. Is that your understanding?

16 A Well, I see Exhibit 336 and it is  
17 certification for satellite calendar or broadcast  
18 year 2000-2001, cable or satellite, 2002.

19 Q Okay, and I'm just trying to  
20 understand your contention. Is this the MPAA  
21 certification to which the Power Rangers public  
22 catalogue reference relates?

1           A       I'm not sure if it's all of them,  
2       because this is the MPAA exhibit being made.  
3       Made claim in other years as well, but on these  
4       certifications, they reflect a claim for the  
5       Power Rangers programming.

6           Q       Now were you --

7                   MR. BOYDSTON: Your Honor, I want to  
8       briefly for the record interpose an objection.  
9       The objection is as follows. I believe that  
10      these questions are irrelevant to the issues that  
11      involve the SDC. These issues only IPG's  
12      rebuttal of the MPAA.

13                   This really simply -- this all has to  
14      do only with the MPAA, the IPG rebuttal of the  
15      MPAA. It has nothing to do with the SDC and it's  
16      simply amounts to a second cross-examination of  
17      my witness, and I object on those grounds.

18                   JUDGE BARRETT: Thank you. Mr.  
19      MacLean.

20                   MR. MACLEAN: Your Honor, it's  
21      relevant to impeachment, and I will add, with  
22      respect to relevance, I'm not a potted plant

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1 here. We have an interest in these proceedings  
2 and we've been participating at all stages.

3 JUDGE BARRETT: I'm not sure what you  
4 think you're impeaching and how. We can read  
5 these lists, okay. On the certifications,  
6 there's Power Rangers, Lightspeed Rescue, Power  
7 Rangers Lost Galaxy, Power Rangers Time Force,  
8 Lightspeed Rescue. That might be the same one I  
9 just read.

10 MR. MACLEAN: Your Honor, may I simply  
11 ask the witness whether he's aware of a  
12 relationship between Saban Entertainment, Inc.  
13 and Fox Family Worldwide, Inc.?

14 JUDGE BARRETT: Yes, you may.

15 BY MR. MACLEAN:

16 Q Mr. Galaz, are you aware of a  
17 relationship between Saban Entertainment, Inc.  
18 and Fox Family Worldwide, Inc.?

19 A At this point now, yes.

20 Q Now you are?

21 A Now there's I think a relationship  
22 between Fox and Saban. That was actually my

1 testimony during the strike, if you recall.

2 Q If you could take a look at that MPAA  
3 Exhibit 360?

4 A I have through 358 and then 361.

5 MR. BOYDSTON: Your Honor, I believe  
6 that was a new one, and maybe separately --

7 THE WITNESS: This is 361?

8 JUDGE BARRETT: 360 is an email  
9 string.

10 (Off mic comments.)

11 THE WITNESS: Oh wait, here it was.  
12 It was just sitting next to me.

13 MR. BOYDSTON: Your Honor, I would  
14 like to pose the same objection that I just made  
15 before. I won't repeat it. I think you might  
16 remember it. If not, I'll say it again.

17 JUDGE BARRETT: Overruled. Go ahead,  
18 Mr. MacLean.

19 BY MR. MACLEAN:

20 Q Mr. Garaz, on the first page, the  
21 email in the middle from Ashley Morgan to Greg  
22 O'Laneran (phonetic), and you'll see -- and I'm

1 just going to ask you if you know who's being  
2 referred to here.

3 The third paragraph of that email it  
4 says "I also received an email in May from a Mike  
5 Cutler with a similar message. He claimed to be  
6 working on behalf of Pick and Boydston for their  
7 client's International Producers Group." Do you  
8 know who Mike Cutler is?

9 A Yes.

10 Q Who is Mike Cutler?

11 A Mike Cutler is an attorney that works  
12 in some connection with Pick and Boydston.

13 He was engaged when the 2000-2003  
14 proceedings started, to assist us in locating  
15 certain IPG represented claimants, and whose  
16 contact information had changed and was no longer  
17 helpful.

18 MR. BOYDSTON: Your Honor, certainly  
19 I should clarify as an officer of the court, Mr.  
20 Cutler is not a lawyer, has never been a lawyer,  
21 and I know has never represented himself as a  
22 lawyer, but did work for us and still does as a

1       paralegal.

2                   THE WITNESS:   My misunderstanding.

3       I'm sorry.

4                   BY MR. MACLEAN:

5           Q       Was Mike Cutler authorized to act on  
6       behalf of International Producers Group?

7           A       Well, International Producers Group.

8           Q       I'm sorry.

9           A       He clearly erred when he said  
10       International Producers Group. If he did --

11          Q       Independent Producers Group.

12          A       It was intended to be Independent  
13       Producers Group. The only thing that he was  
14       engaged to do was to try to locate these parties.  
15       That was all.

16          Q       But he was engaged to do that on  
17       behalf of IPG?

18          A       That's right, just to get correct  
19       contact information for them.

20                   MR. MACLEAN:   Your Honor, may I have  
21       this exhibit marked as the next exhibit in order?

22                   JUDGE BARRETT:   You may, but we won't

1 have time for questions on it today. So you  
2 might want to just hang on to it.

3 MR. MACLEAN: Okay.

4 JUDGE BARRETT: Okay, thank you. We  
5 are at recess until nine o'clock Monday morning.

6 MR. BOYDSTON: I have one direct or  
7 redirect. Should I do that and then maybe he's  
8 done?

9 JUDGE BARRETT: No, he's not done with  
10 his cross.

11 MR. BOYDSTON: Oh, I'm sorry. I  
12 misunderstood.

13 JUDGE BARRETT: No.

14 MR. MACLEAN: Your Honor, this is my  
15 very last exhibit and then I'll be done with my  
16 cross. I'm just making that offer.

17 JUDGE BARRETT: I appreciate it, but  
18 Mr. Galaz will be here on Monday, I presume, and  
19 we cannot go late today. We were late yesterday,  
20 so the rest of us have other things on the  
21 docket. I'm sure you do too. So we'll see you  
22 all at nine o'clock Monday morning.

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1 MR. BOYDSTON: Thank you, Your Honor.

2 JUDGE BARRETT: Are we off the record?

3 One last thing. We'll see you at nine o'clock  
4 Monday morning, if the government is open. The  
5 bill, I don't think, has passed both houses and  
6 there's rumbling about vetoing afoot.

7 MR. BOYDSTON: Your Honor, should we  
8 just assume that if we read in the news that the  
9 bill did not pass, that we should not bother  
10 coming?

11 JUDGE BARRETT: You might just try  
12 calling the Library's main number or looking at  
13 its website, because information will be  
14 available.

15 MR. BOYDSTON: Oh, thank you.

16 (Whereupon, the above-entitled matter  
17 went off the record at 4:29 p.m.)

18

19

20

21

22

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